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Emergency Management and Assistance

44

Revised as of October 1, 1988

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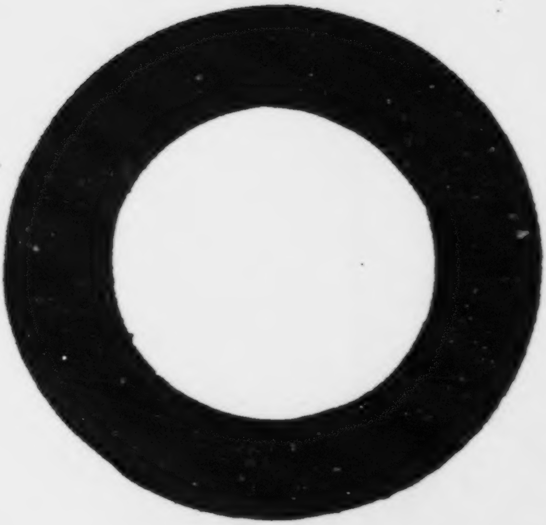

code of federal regulations

Emergency Management and Assistance

44

Revised as of October 1, 1988

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OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF OCTOBER 1, 1988

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Cite this Code: **CFR**

To cite the regulations in this volume use title, part , and section number. Thus, 44 CFR 1.1 refers to Title 44, Part 1, section 1.

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16..........as of January 1
Title 17 through Title 27..........as of April 1
Title 28 through Title 41..........as of July 1
Title 42 through Title 50..........as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request. Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, DC 20402 (telephone 202-783-3238).

JOHN E. BYRNE,
Director,
Office of the Federal Register.

October 1, 1988.

THIS TITLE

Title 44—EMERGENCY MANAGEMENT AND ASSISTANCE is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of October 1, 1988.

Redesignation tables for Chapter I—Federal Emergency Management Agency, appear in the Finding Aids section of this volume.

The Transferred Regulations—List of CFR Sections Affected, carried in the Finding Aids section of this volume, contain the codification lists of the regulations issued prior to redesignation and transfer from other titles to Title 44.

For this volume Kevin A. Green was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Ruth C. Pontius.

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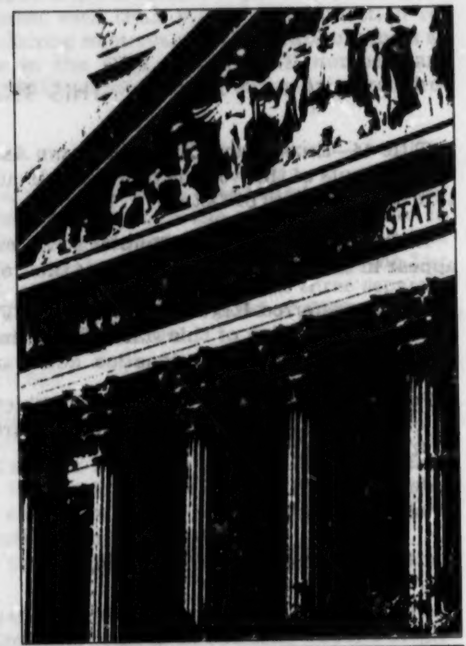

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AUTHORITY: 5 U.S.C. 551, 552, 553; 5 U.S.C. 601, *et seq.;* EO 12291. Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

SOURCE: 46 FR 32584, June 24, 1981, unless otherwise noted.

Subpart A—General

§ 1.1 Purpose.

(a) This part contains the basic policies and procedures of the Federal Emergency Management Agency (FEMA) for adoption of rules. These policies and procedures incorporate those provisions of section 4 of the Administrative Procedure Act (APA) (5 U.S.C. 553) which FEMA will follow. This part and internal FEMA Manuals implement Executive Order 12291.

(b) Rules which must be published are described in section 3(a) of the APA, 5 U.S.C. 552(a). FEMA implementation of paragraph (a) is contained in 44 CFR Part 5, Subpart B.

(c) This part contains policies and procedures for implementation of the Regulatory Flexibility Act which took effect January 1, 1981.

(d) A FEMA Manual No. 1140.1, "The Formulation, Drafting, Clearance, and Publication of FEDERAL REGISTER Documents" has been issued describing the internal procedures including policy level oversight of FEMA for:

(1) Publishing the semiannual agenda of significant regulations under development and review;

(2) Making initial determinations with respect to significance of proposed rulemaking;

(3) Determining the need for regulatory analyses; and

(4) Reviewing existing regulations, including the reviews required by the Regulatory Flexibility Act.

(e) As the FEMA Manual deals with internal management it is not subject to the requirements either of 5 U.S.C. 552 or 553. Its provisions are not part of this rule and reference to it is informative only.

[46 FR 32584, June 24, 1981, as amended at 49 FR 33878, Aug. 27, 1984]

§ 1.2 Definitions.

(a) "Rule" or "regulation" means the whole or a part of any agency statement of general applicability and future effect designed to (1) implement, interpret, or prescribe law or policy, or (2) describe procedures or practice requirements. It includes any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term "rule" does not include a rule of particular applicability relating to rates, wages, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances. For purposes of this part the term "rule" does not include regulations issued with respect to a military or foreign affairs function of the United States.

(b) "Rulemaking" means the FEMA process for considering and formulating the issuance, amendment or repeal of a rule.

(c) "Director" means the Director, FEMA, or an official to whom the Director has expressly delegated authority to issue rules.

(d) "FEMA" means Federal Emergency Management Agency.

(e) "Major rule" means any regulation that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

[46 FR 32584, June 24, 1981, as amended at 49 FR 38118, Sept. 27, 1984]

§ 1.3 Scope.

(a) This part prescribes general rulemaking procedures for the issuance, amendment, or repeal of rules in which participation by interested persons is required by 5 U.S.C. 553 or other statutes, by Executive Order 12291, by FEMA policy, or by § 1.4 of this part.

(b) Any delegation by the Director of authority to issue rules may not be further redelegated, unless expressly provided for in the delegation.

(c) This part does not apply to rules issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 1.4 Policy and procedures.

(a) In promulgating new regulations, reviewing existing regulations, and developing legislative proposals concerning regulation, FEMA, to the extent permitted by law, shall adhere to the following requirements:

(1) Administrative decisions shall be based on adequate information concerning the need for and consequences of proposed government action;

(2) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(3) Regulatory objectives shall be chosen to maximize the net benefits to society;

(4) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(5) FEMA shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular entities affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

(b) It is the policy of FEMA to provide for public participation in rulemaking regarding its programs and functions, including matters that relate to public property, loans, grants, or benefits, or contracts, even though these matters are not subject to a requirement for notice and public comment rulemaking by law.

(c) FEMA will publish notices of proposed rulemaking in the FEDERAL REGISTER and will give interested persons an opportunity to participate in the rulemaking through submission of written data, views, and arguments with or without opportunity for oral presentation.

(d) In order to give the public, including small entities and consumer groups, an early and meaningful opportunity to participate in the development of rules, for a number of regulations the Director will employ additional methods of inviting public participation. These methods include, but are not limited to, publishing advance Notices of Proposed Rulemaking (ANPR), which can include a statement with respect to the impact of the proposed rule on small entities; holding open conferences; convening public forums or panels, sending notices of proposed regulations to publications likely to be read by those affected and soliciting comment from interested parties by such means as direct mail. An ANPR should be used to solicit public comment early in the rulemaking process for significant rules.

(e) It is the policy of FEMA that its notices of proposed rulemaking are to afford the public at least sixty days for submission of comments unless the Director makes an exception and sets forth the reasons for the exception in the preamble to the notice of proposed rulemaking. This period shall also include any period of review required by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980.

(f) Unless required by statute or Executive Order, notice and public procedure may be omitted if the Director, for good cause, determines in a particular case or class of cases that notice and public procedure is impractical, unnecessary or contrary to the public interest and sets forth the reason for the determination in the rulemaking document or, for a class of cases, in a published rule or statement of policy. In a particular case, the reasons for the determination will be stated in the rulemaking document. Notice and public procedure may also be omitted with respect to statements of policy, interpretative rules, rules governing FEMA's organization or its own internal practices or procedures, or if a statute expressly authorizes omission.

(g) A final substantive rule will be published not less than 30 days before its effective date unless it grants or recognizes an exemption or relieves a restriction or unless the rulemaking document states good cause for its taking effect less than 30 days after publication. Statements of policy and interpretative rules will usually be made effective on the date of publication.

(h) This part shall not apply to any regulation that responds to an emergency situation, provided that, any such regulation shall be reported to the Director, Office of Management and Budget, as soon as is practicable. FEMA shall publish in the FEDERAL REGISTER a statement of the reasons why it is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to such a rule, and the agency shall prepare and transmit, if needed, as soon as is practicable a Regulatory Impact Analysis of any such major rule.

[46 FR 32584, June 24, 1981, as amended at 49 FR 38119, Sept. 27, 1984; 50 FR 40004, Oct. 1, 1985]

§ 1.5 Rules docket.

(a) Documents which are public records and which are a part of a specific rulemaking procedure, including but not limited to, advance notices of proposed rulemaking, notices of proposed rulemaking, written comments addressed to the merits of a proposed rule, and comments received in response to notices, or withdrawals or terminations of proposed rulemaking, petitions for rulemaking, requests for oral argument in public participation cases, requests for extension of time, grants or denials of petitions or requests, transcripts or minutes of informal hearings, final rules and general notices shall be maintained in the Office of General Counsel. All public rulemaking comments should refer to the docket number which appears in the heading of the rule and should be addressed to the Rule Docket Clerk, Federal Emergency Management Agency, Office of General Counsel.

(b) Documents which are a part of a specific rulemaking proceeding are public records. After a docket is established, any person may examine docketed material at any time during established hours of business and may obtain a copy of any docketed material upon payment of the prescribed fee. (See Part 5 of this chapter.)

[46 FR 32584, June 24, 1981, as amended at 48 FR 44542, Sept. 29, 1983]

§ 1.6 Ex parte communications.

In rulemaking proceedings subject only to the procedural requirements of 5 U.S.C. 553:

(a) All oral communications from outside FEMA of significant information and argument respecting the merits of a proposed rule, received after notice of proposed informal rulemaking and in its course by FEMA or its offices and divisions or their personnel participating in the decision, should be summarized in writing and placed promptly in the Rules Docket File available for public inspection.

(b) FEMA may conclude that restrictions on ex parte communications in particular rulemaking proceedings are necessitated by consideration of fairness or for other reasons.

§ 1.7 Regulations agendas.

(a) The FEMA semi-annual agenda called for by Executive Order 12291 will be part of the Unified Agenda of Federal Regulations published in April and October of each year.

(b) In accordance with 5 U.S.C. 605, the regulatory flexibility agenda required by 5 U.S.C. 602 and the list of rules, if any, to be reviewed pursuant to 5 U.S.C. 610 shall be included in the FEMA semiannual agenda described in paragraph (a) of this section.

(c) The semiannual agenda shall, among other items, include:

(1) A summary of the nature of each major rule being considered, the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any major rule for which the agency has issued a notice of proposed rulemaking.

(2) The name and telephone number of a knowledgeable agency official for each item on the agenda; and

(3) A list of existing regulations to be reviewed under the terms of the Order and a brief discussion of each such regulation.

[46 FR 32584, June 24, 1981, as amended at 49 FR 33878, Aug. 27, 1984]

§ 1.8 Regulations review.

(a) As part of the semiannual agenda described in §1.7 of this part, FEMA will publish in the FEDERAL REGISTER and keep updated a plan for periodic review of existing rules at least within 10 years from date of publication of a rule as final. This includes those that have significant impact on a substantial number of small entities.

(b) The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, including minimizing any significant economic impact of the rules upon a substantial number of small entities.

(c) In reviewing rules FEMA shall consider the following factors:

(1) The continued need for the rule;

(2) The nature, type and number of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule, including need for review of language for clarity;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

§ 1.9 Regulatory impact analyses.

(a) FEMA shall, in connection with any major rule, prepare and consider a Regulatory Impact Analysis. Such analysis may be combined with the Regulatory Flexibility Analysis described in §§ 1.12(f) and 1.16(c) of this part.

(b) FEMA shall initially determine whether a rule it intends to propose or to issue is a major rule and, if a major rule, shall prepare Regulatory Impact Analyses and transmit them, along with all notices of proposed rulemaking and all final rules, to the Director, Office of Management and Budget, as follows:

(1) If no notice of proposed rulemaking is to be published for a proposed major rule that is not an emergency rule, the agency shall prepare only a final Regulatory Impact Analysis, which shall be transmitted, along with the proposed rule, to the Director, Office of Management and Budget, at least 60 days prior to the publication of the major rule as a final rule;

(2) With respect to all other major rules, FEMA shall prepare a preliminary Regulatory Impact Analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director, Office of Management and Budget, at least 60 days prior to the publication of a notice of proposed rulemaking, and a final Regulatory Impact Analysis, which shall be transmited along with the final rule at least 30 days prior to the publication of the major rule as a final rule;

(3) For all rules other than major rules, FEMA shall, unless an exemption has been granted, submit to the Director, Office of Management and Budget, at least 10 days prior to publication, every notice of proposed rulemaking and final rule.

(c) To permit each major rule to be analyzed in light of the requirements stated in section 2 of Executive Order 12291, each preliminary and final Regulatory Impact Analysis shall contain the following information:

(1) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms, and the identification of those likely to receive the benefits;

(2) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs;

(3) A determination of the potential net benefits of the rule, including an evaluation of effects that cannot be quantified in monetary terms;

(4) A description of alternative approaches that could substantially achieve the same regulatory goal at lower cost, together with an analysis of this potential benefit and costs and a brief explanation of the legal reasons why such alternatives, if proposed, could not be adopted; and

(5) Unless covered by the description required under paragraph (c)(4) of this section, an explanation of any legal reasons why the rule cannot be based on the requirements set forth in section 2 of Executive Order 12291.

Subpart B—Procedures for Rulemaking

§ 1.10 Initiation of rulemaking.

Rulemaking may be initiated on the Director's motion or upon motion of an official to whom rulemaking authority has been delegated. Rulemaking may also be initiated on the petition of any interested person in accordance with the provisions of § 1.18. Interested person includes a Federal, State, or local government or government agency.

§ 1.11 Advance notice of proposed rulemaking.

An Advance Notice of Proposed Rulemaking will be published in the FEDERAL REGISTER and contains:

(a) A description of the proposed new program or program changes, and why they are needed;

(b) A presentation of the major policy issues involved;

(c) A request for comments, both specific and general, on the need for the proposed rule and the provisions that the rule might include;

(d) If appropriate, a list of questions about the proposal which seeks to bring out detailed comments;

(e) If known, an estimate of the reporting or recordkeeping requirements, if any, that the rule would impose; and

(f) The time within which comments may be submitted to the Rules Docket Clerk, Federal Emergency Management Agency, Washington, DC 20472.

[46 FR 32584, June 24, 1981, as amended at 48 FR 44542, Sept. 29, 1983; 49 FR 33879, Aug. 27, 1984]

§ 1.12 Notice of proposed rulemaking.

Each notice of proposed rulemaking required by statute, executive order, or by § 1.4 will be published in the FEDERAL REGISTER and will include:

(a) The substance or terms of the proposed rule or a description of the subject matter and issues involved.

(b) A statement of how and to what extent interested persons may participate in the proceeding.

(c) Where participation is limited to written comments, a statement of the time within which such comments must be submitted.

(d) A reference to the legal authority under which the proposal is issued.

(e) In a proceeding which has provided Advance Notice of Proposed Rulemaking, an analysis of the principal issues and recommendations raised by the comments, and the manner in which they have been addressed in the proposed rulemaking.

(f)(1) A brief statement setting forth the agency's initial determination whether the proposed rule is a major rule, together with the reasons underlying that determination;

(2) For each proposed major rule, a brief summary of the agency's preliminary Regulatory Impact Analysis; and

(3) The initial regulatory flexibility analysis or a summary thereof as required by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), or a certification that the rule, if promulgated, will not have a significant economic impact on a significant number of small entities pursuant to 5 U.S.C. 605. Such certification may be made by any FEMA official with rulemaking authority.

(g) It is desirable, but not required, that the notices contain a target deadline for issuance of the regulation, and that to the extent feasible, this deadline be met.

(h) If the rule is one which contains a requirement for collection of information, a copy of the rule will be furnished OMB in accordance with 44 U.S.C. 3504(h).

[46 FR 32584, June 24, 1981, as amended at 49 FR 38119, Sept. 27, 1984]

§ 1.13 Participation by interested persons.

(a) Unless the notice otherwise provides, any interested person may participate in rulemaking proceedings by submitting written data, views or arguments within the comment time stated in the notice. In addition, the Director may permit the filing of comments in response to original comments.

(b) In appropriate cases, the Director may provide for oral presentation of views in additional proceedings described in § 1.14.

(c) Copies of regulatory flexibility analyses shall be furnished the Chief Counsel for Advocacy of the Small Business Administration.

§ 1.14 Additional rulemaking proceedings.

The Director may invite interested persons to present oral arguments, appear at informal hearings, or participate in any other procedure affording opportunity for oral presentation of views. The transcript or minutes of such meetings, as appropriate, will be kept and filed in the Rules Docket.

§ 1.15 Hearings.

(a) The provisions of 5 U.S.C. 556 and 557, which govern formal hearings in adjudicatory proceedings, do not apply to informal rulemaking proceedings described in this part. When opportunity is afforded for oral presentation, the informal "hearing" is a nonadversary, fact-finding proceeding. Any rule issued in a proceeding under this part in which a hearing is held need not be based exclusively on the record of such hearing.

(b) When a hearing is provided, the Director will designate a representative tc conduct the hearing.

§ 1.16 Adoption of a final rule.

(a) All timely comments will be considered in taking final action on a proposed rule. Each preamble to a final rule will contain a short analysis and evaluation of the relevant significant issues set forth in the comments submitted, and a clear concise statement of the basis and purpose of the rule.

(b) When determined necessary by the Director in accordance with the provisions of 1 CFR 18.12, the preamble shall contain the following information:

(1) A discussion of the background and major issues involved;

(2) In the case of a final rule, any significant differences between it and the proposed rule;

(3) A response to substantive public comments received; and

(4) Any other information the Director considers appropriate.

(c) At the time of publication of the final rule, a statement shall be published describing how the public may obtain copies of the final regulatory flexibility analysis which must be prepared in accordance with 5 U.S.C. 604 unless the procedure for waiver or delay of completion under 5 U.S.C. 608 is followed.

(d) Before approving any final major rule FEMA will:

(1) Make a determination that the regulation is clearly within the authority delegated by law and consistent with congressional intent and include in the FEDERAL REGISTER at the time of promulgation a memorandum of law supporting that determination; and

(2) Make a determination that the factual conclusions upon which the rule is based have substantial support

in the agency record, viewed as a whole, with full attention to public comments in general and the comments of persons directly affected by the rule in particular.

§ 1.17 Petitions for reconsideration.

Petitions for reconsideration of a final rule will not be considered. Such petitions, if filed, will be treated as petitions for rulemaking in accordance with § 1.18.

§ 1.18 Petition for rulemaking.

(a) Any interested person may petition the Director for the issuance, amendment, or repeal of a rule. For purposes of this section the term "person" includes a Federal, State or local government or government agency. Each petition shall:

(1) Be submitted to the Rules Docket Clerk;

(2) Set forth the substance of the rule or amendment proposed or specify the rule sought to be repealed or amended;

(3) Explain the interest of the petitioner in support of the action sought; and

(4) Set forth all data and arguments available to the petitioner in support of the action sought.

(b) No public procedures will be held directly on the petition before its disposition. If the Director finds that the petition contains adequate justification, a rulemaking proceeding will be initiated or a final rule will be issued as appropriate. If the Director finds that the petition does not contain adequate justification, the petition will be denied by letter or other notice, with a brief statement of the ground for denial. The Director may consider new evidence at any time; however, repetitious petitions for rulemaking will not be considered.

PART 2—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

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AUTHORITY: 5 U.S.C. 552; Reorg. Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

Subpart A—Organization and Functions

SOURCE: 48 FR 10837, Mar. 15, 1983, unless otherwise noted.

GENERAL

§ 2.1 Purpose.

This part describes the organization of the Federal Emergency Management Agency (FEMA), and the general course and method by which its functions are channeled and determined. It provides for the exercise by officials of FEMA of authorities which are vested in the Director specifically by statute, as head of an agency, or as a consequence of a law authorizing such exercise. It also provides for exercise of authorities which have been transferred to the Director by Reorganization Plan or delegated to the Director by Executive Order or other appropriate document.

§ 2.2 Organization of FEMA.

(a) The Director is the head of FEMA. All authorities of FEMA are either vested in the Director or have been transferred to or delegated to the Director. Notwithstanding any delegation by the Director to a subordinate officer of FEMA, the Director may exercise such authority.

(b) FEMA is composed of the Administrators, Directorates and offices, the responsibilities of which are described in § 2.10 *et seq.*

[51 FR 194, Jan. 3, 1986]

FEMA OFFICES

§ 2.10 Office of the Director.

The Office of the Director consists of the immediate office of the Director.

§ 2.11 Office of the Deputy Director.

The Office of the Deputy Director consists of the immediate office of the Deputy Director.

[50 FR 40004, Oct. 1, 1985]

§ 2.12 Regional Offices.

The ten FEMA regional offices are headed by Regional Directors who are the primary source through which the Agency's policies and programs are determined and carried out at the State and local level. The Regional Directors are FEMA's principal representatives in contacts and relationships with Federal regional, State and local agencies, industry and other public and private groups. They are responsible for accomplishing, within their regions, the national program objectives established for the Agency by the Director.

[50 FR 40004, Oct. 1, 1985, as amended at 51 FR 194, Jan. 3, 1986]

§ 2.13 State and Local Programs and Support Directorate (SLPS).

This directorate administers authorities under the Disaster Relief Act of 1974, the Federal Civil Defense Act of 1950, as amended (particularly those relating to assistance to State and local governments), relocation functions under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the review and approval of State and local radiological emergency response plans, and other programs of support to State and local governments, and the private sector which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. The Directorate is headed by an Associate Director.

(a) The *Office of Natural and Technical Hazards Programs* develops Federal plans to mitigate hazards and, when necessary, respond to natural and non-war related man-made disasters. This office also develops and administers programs that provide financial and technical help to State and local governments in emergency management of natural and technological hazards.

(b) The *Office of Disaster Assistance Programs* administers the President's Disaster Relief Program which provides for supplemental Federal assistance in declared major disasters and emergencies. This office develops and administers policy and guidance that ensures the effective implementation of relief programs to help individuals as well as State and local governments in recovering from the effects of peacetime major disasters and emergencies and to prevent or mitigate future losses after these disasters or emergencies. It is responsible for fire suppression assistance in coordination with the United States Fire Administration.

(c) The *Office of Emergency Management Programs* assists State and local governments and the private sector in maximizing the survival of the population and other vital resources in the event of civil emergency. It also provides for effective emergency management planning, the development of improved response capabilities, and financial and technical assistance to enhance operational capabilities of State and local governments.

[48 FR 10637, Mar. 15, 1983, as amended at 49 FR 5927, Feb. 16, 1984]

§ 2.14 National Preparedness Programs Directorate (NPP).

This directorate administers certain of the authorities contained in the National Security Act, the Strategic and Critical Materials Stock Piling Act, the Federal Civil Defense Act of 1950, as amended, particularly national and federal plans and programs, the Defense Production Act of 1950, as amended, and other national programs. This Office develops, implements and tests plans, policies, concepts and procedures related to peacetime and wartime emergencies. With respect to assigned functions, it serves as prinicpal point of contact with the Department of Defense. The directorate is headed by an Associate Director.

(a) The *Office of Resources Preparedness* identifies shortages of natural, industrial, or economic resources that could constitute a threat to national security; develops plans to mitigate the impact of resource shortages; and establishes programs to reduce our nation's vulnerability to resource shortfalls.

(b) The *Office of Civil Preparedness* is responsible for the development and conduct of research, policy development, programming and long range planning activities bearing on the protection of the population and key industrial components of the United States against the full range of domestic and national security emergencies. Reviews, monitors and recommends research and development efforts and conducts a small inter-disciplinary program in areas not covered by other FEMA offices.

(c) The *Office of Federal Preparedness* develops mobilization planning assumptions and priorities for FEMA and other executive branch organizations and coordinates mobilization planning, with the national security plans of the National Security Council, and the Department of Defense.

[48 FR 10637, Mar. 15, 1983, as amended at 50 FR 40004, Oct. 1, 1985]

§ 2.15 [Reserved]

§ 2.16 Training and Fire Programs Directorate/National Emergency Training Center (TFP).

This directorate consists of the National Emergency Training Center and the United States Fire Administration. It is headed by an Associate Director.

(a) The *National Emergency Training Center* provides training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, and long-term disaster recovery. The training is carried out both through a resident program at a central campus facility located in Emmitsburg, Maryland, and through an outreach program which makes courses available at the State and local levels throughout the country.

(1) The *Emergency Management Institute (EMI)* provides training to emergency managers in four principal areas: National security; technological hazards; natural hazards; and emergency processes. EMI hosts national conferences and seminars on current emergency management issues.

(2) *The National Fire Academy* provides training in three areas: fire protection management; fire prevention and loss control (including arson investigation); and fire service technology. This training is targeted to fire service personnel and allied professionals at the resident facility and through a field program.

(3) *The Office of Programs and Academics* reviews, analyzes, and evaluates all National Emergency Training Center curricula. Provides long-range curricula planning, coordinates academic needs, conducts research, and evaluates curricula effectiveness.

(4) The *Office of Management and Administration* oversees the daily management of the National Emergency Training Center. The Office coordinates contracts, student services, personnel, facility operations, media production, printing, and reproduction. Other responsibilities include management of the directorate's budget and other finance and contract operations, the Learning Resources Center, grants programs, and coordination between NETC and FEMA headquarters elements.

(b) *United States Fire Administration (USFA)* administers programs to reduce the nation's loss of life from fire and to achieve significant reductions in property loss and human injury from fire.

(1) *Fire Data and Analysis.* Collects, analyzes and disseminates fire data. This is for the purpose of spotting trends, delineating training, code and fire management needs. Use of the National Fire Incident Reporting System will result in standardization of the entire system.

(2) *Office of Fire Prevention and Arson Control.* Coordinates all Federal arson prevention and control programs. Identifies model problems that can be transferred to State and local fire services in fire prevention and arson control.

(3) *Fire Fighter Health and Safety Programs.* Promotes the development and use of fire protection systems, of improved firefighter protective equipment and of the various means to improve firefighter occupational health. Assists other agencies and State and local governments in the development of fire safety regulations for firefighters and other emergency personnel.

[48 FR 10637, Mar. 15, 1983, as amended at 48 FR 30336, July 1, 1983]

§ 2.17 Federal Insurance Administration (FIA).

FIA administers two Federal Insurance programs: The National Flood Insurance program which insures property owners against flood loss, and the Federal Crime Insurance Program. The Administration is headed by an Administrator. It also is responsible for floodplain management functions under the National Flood Insurance Act and FEMA functions under the Coastal Barrier Resources Act, except for functions relative to the Disaster Relief Act of 1974.

(a) The *Office of Insurance Operations* handles the day-to-day operations of the flood, and crime insurance programs and provides guidance on program issues to contractual and fiscal agents operating these programs. This includes issuing policies, processing and paying claims, billing insurance premiums, and providing information on rates.

(b) The *Office of Policy Analysis and Technical Services* is responsible for overall policy and technical guidance on insurance matters, including the resolution of insurance coverage, interpretations, claims and underwriting appeals.

(c) The *Office of Insurance Support Services* operates an FIA program planning system and provides actuarial support services.

(d) The *Office of Loss Reduction* is responsible for developing, administering, and coordinating FIA's overall floodplain management policy and implementing procedures among the Federal agencies, State and local governments (including establishing and maintaining community participation in the NFIP); it provides consultative services to other Federal agencies on Executive Order 11988 (Floodplain Management); it performs lead agency duties under the Unified National Program for Floodplain Management; and it administers the NFIP property acquisition program.

(e) The *Office of Risk Assessment* conducts studies to produce flood risk data and hazard maps for the Nation's flood-prone communities in support of actuarial insurance rating and floodplain management activities under the National Flood Insurance Program. This includes development of technical methodology and policy, resolution of appeals of risk designations, technical assistance in the use and interpretation of risk information and operation of dissemination systems for risk data and hazard mapping.

[48 FR 10637, Mar. 15, 1983, as amended at 49 FR 5927, Feb. 16, 1984; 50 FR 40005, Oct. 1, 1985]

§ 2.18 Emergency Operations Directorate (OP).

The Directorate is responsible for management of the Agency's emergency operations, including development of plans and policies and implementation of programs concerned with continuity of the Federal Government in times of emergency. It is responsible for central management of emergency operations information processing resources, as well as for management of the Agency's emergency facilities. It provides for coordination of internal agency planning and response to national emergencies. The office is headed by an Associate Director, Emergency Operations.

(a) The *Office of Readiness Planning and Operations* develops, coordinates, tests, and evaluates plans and programs providing for continuity and effective operation of the Federal Government during a national emergency. The office serves as the focal point for the Agency's operational response to any such emergency.

(b) The *Office of Operating Systems Development* is responsible for development and initial deployment of systems required for effective accomplishment of the Agency's emergency operations mission. The office develops and initially deploys systems which become the operational responsibility of other Emergency Operations offices.

(c) The *Office of Information Resources Management* centrally manages agency resources used for information processing, including telecommunications, automatic data processing, and information systems. The office is also responsible for development of program guidance for the Emergency Broadcast System (EBS), and for overall management of the Agency's activities connected with that system.

(d) The *Office of Emergency Coordination and Support* provides logistic planning support required for development and implementation of emergency operations systems. The office is also responsible for planning and coordinating the internal FEMA response to national emergencies.

(e) The *Office of Operations Analysis and Control* provides overall technical configuration and integration management for emergency operations programs, including coordination of the planning, programming and budgeting processes for those programs.

(f) The *Office of Facilities Management* is responsible for management and operational readiness of a secure facility from which the Federal Government can respond to national emergencies. It also provides technical support required for management of other agency emergency facilities.

(g) The *Emergency Information and Coordination Center and Alternate Emergency Information Coordination Center* provides facilities and other resources required for making accurate and timely emergency management decisions, including those resources necessary for rapid and reliable transmission of decisions under conditions of peace and war.

[48 FR 10637, Mar. 15, 1983, as amended at 49 FR 5927, Feb. 16, 1984]

§ 2.19 Office of the Inspector General (IG).

This office plans, supervises and coordinates internal and external audit and investigation activities relating to FEMA programs and operations. It recommends policies to promote efficiency and to prevent and detect fraud and abuse. Serves as the point of contact with law enforcement agencies on law enforcement matters. This office is headed by the Inspector General.

[48 FR 10637, Mar. 15, 1983, as amended at 49 FR 5927, Feb. 16, 1984]

§ 2.20 Office of the General Counsel (GC).

This office provides legal advice to the Director and agency staff on FEMA duties, authorities, statutes, rules and regulations, and administrative procedure. It prepares and coordinates all Agency appearances in litigation or administrative proceedings and determines the agency legal position with respect to all matters. It reviews for legal sufficiency and transmits all regulations and other documents which are to be published in the FEDERAL REGISTER. This office is headed by the General Counsel.

§ 2.21 Office of Program Analysis and Evaluation (PAE).

This office provides information and analyses to the Director and Deputy Director and other key officials in support of their decision-making and management activities.

[50 FR 40005, Oct. 1, 1985]

§ 2.22 Office of Executive Administration.

(a) The Office of Executive Administration consists of the immediate office of the Executive Administrator who provides executive services to the Director and the Deputy Director. The Executive Administrator coordinates activities of the following staff offices;

(b) Staff offices as follows:

(1) *Office of Congressional Relations* serves as principal point of contact between FEMA and members of Congress, its committees and staffs.

(2) *Office of International Affairs* serves as principal staff advisor on policy and programs involving international civil emergency activities.

(3) *Office of Public Affairs* provides staff assistance for public information programs. Has primary responsibility for the Freedom of Information Act and Privacy Act.

(4) *Office of Equal Opportunity* advises on the scope and coverage of the FEMA equal opportunity program, develops agency affirmative action plans, and conducts reviews and evaluations of program implementation.

(5) *Office of Security* develops, administers and directs overall FEMA security program.

(6) The *Office of Personnel* develops, implements, administers, and manages FEMA's personnel policies and programs, including position management and classification, recruitment, placement, salary administration, labor management relations, merit pay, special programs (DAE, Shelter Survey), performance appraisal, incentive awards, discipline, retirement, health insurance, training and career development, and in conjunction with the Equal Opportunity Office, equal employment opportunity.

(7) *The Office of Administrative Support* directs the administrative programs and systems necessary for effective management of the agency and provides the administrative services and support essential to day-to-day operations. Services and support include: Space and property management; motor vehicle management; mail management; printing procurement; centralized publications management including storage/distribution; graphic arts and design for visual presentation materials; records and information systems management which encompasses the directives systems, reports and forms management, control of public information collection, and management of official records; and providing a variety of support services at FEMA Headquarters including supplies, materials, equipment and furnishings.

(8) *The Office of Acquisition Management* negotiates, awards, and administers contracts, grants, cooperative agreements, interagency agreements and purchase orders. This office is also responsible for developing and improving Agency acquisition policies and procedures, evaluating the effectiveness of all Agency procurement activities in headquarters and field levels, conducting procurement training courses for all Agency personnel involved in the procurement process, operating a procurement and assistance management information system which produces reports for Agency management, OMB, Congress and the public, providing technical support for field procurement activities, and managing the Agency's preferential procurement program goals and achievements.

[48 FR 10837, Mar. 15, 1983, as amended at 49 FR 5927, Feb. 16, 1984; 50 FR 40005, Oct. 1, 1985; 51 FR 194, Jan. 3, 1986; 51 FR 2499, Jan. 17, 1986]

§ 2.23 Office of the Comptroller.

This office formulates agency policies and principles governing the establishment of budgetary and accounting systems. It coordinates agency financial programs with the Office of

Management and Budget. It is responsible for establishing Agency policy and procedures in the area of financial management, planning, formulating and administering the budget, operating an Agency-wide accounting and reporting system, formulating policy and procedures for the financial management of grant and assistance agreements, and providing technical assistance and training to Agency personnel and grantees in the areas of financial management, grant and assistance agreements, budgeting and accounting.

§ 2.24 Office of Regional Operations.

This office provides liaison between the Director, the Deputy Director, and Regional Directors.

[50 FR 40005, Oct. 1, 1985]

FEMA LOCATIONS

§ 2.30 FEMA Headquarters.

The Office of the Director, FEMA, is located at Federal Center Plaza, 500 C Street, SW., Washington, DC 20472.

§ 2.31 FEMA Regions.

Region I, Room 442, J.W. McCormack Post Office and Court House, Boston, MA 02109.

Region II, 26 Federal Plaza, New York, NY 10278.

Region III, Liberty Square Bldg. (Second Floor), 105 South Seventh Street, Philadelphia, PA 19106.

Region IV, 1371 Peachtree Street, NE., 7th Floor, Altanta, GA 20309.

Region V, 300 South Wacker Drive, 24th Floor, Chicago, IL 60606.

Region VI, Federal Regional Center, Denton, TX 76201.

Region VII, 911 Walnut Street, Room 300, Kansas City, MO 64106.

Region VIII, Denver Federal Center, Bldg. 710, Denver, CO 80225-0267.

Region IX, Building 105, Presidio of San Francisco, CA 94129.

Region X, Federal Regional Center, 130—228th Street, S.W., Bothell, WA 98021-9796.

[50 FR 40005, Oct. 1, 1985]

§ 2.32 National Emergency Training Center.

The National Emergency Training Center is located at Emmitsburg, Maryland 21727.

Subpart B—Delegations

SOURCE: 47 FR 12173, Mar. 22, 1982, unless otherwise noted.

GENERAL

§ 2.50 Purpose.

This subpart provides for the exercise of certain of the powers and the performance of certain of the duties which are vested by law in the Director, Federal Emergency Management Agency (FEMA), herein referred to as the Director, or which have been transferred to the Director by Reorganization Plan or delegated to the Director by Executive Order or other document.

§ 2.51 Exercise of authority.

Exercise of the authority delegated by this subpart or redelegated pursuant to this subpart is subject to the direction, control, and authority of the Director, and is governed by applicable laws, Executive Orders, Federal agency regulations or issuances applicable to FEMA. Such exercise is also governed by regulations issued by FEMA, and by policies, objectives, directives, manuals, instructions, plans, standards, procedures and limitations issued from time to time by or on behalf of the Director. Use of the authority is subject to required coordination with other FEMA officials.

§ 2.52 General limitations and reservations.

(a) All powers and duties not delegated by the Director in this subpart, nor otherwise provided for in Title 44, including § 2.53, which provides for internal unpublished delegations, are reserved to the Director.

(b) The following specific authorities are reserved to the Director:

(1) Certain authorities relating to reporting to Congress and the President including those under:

(i) Section 16 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2215);

(ii) Section 1320 of the National Flood Insurance Act (42 U.S.C. 4027);

(iii) Section 1234 of the National Housing Act (42 U.S.C. 1749bbb-10d);

(iv) Section 406 of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2258);

(v) Section 6 of the Earthquake Hazard Reduction Act of 1979 (42 U.S.C. 7705);

(vi) Section 2-105 of Executive Order 12148 dated July 20, 1979;

(2) Authorities connected with declaration of major disasters and emergencies, and with delegations to other agencies including:

(i) The authority to make recommendations to the President concerning the determination that an emergency exists pursuant to section 301(a) of the Disaster Relief Act of 1974 (42 U.S.C. 5141(a));

(ii) The authority to make recommendations to the President concerning the issuance of a major disaster declaration pursuant to section 301(b) of the Disaster Relief Act of 1974 (42 U.S.C. 5141(b));

(iii) Provision is made in § 2.61 of this part for exercise of the authorities set out in this paragraph when the Director is unavailable.

(3) International preparedness functions.

(4) Authorities relating to voluntary agreements under section 708 of the Defense Production Act (50 U.S.C. App. 2158) delegated to the Director in section 501 of Executive Order 10480.

(5) [Reserved]

(6) Authority to make the determination concerning federal operation of the program and the report to Congress under section 1340 of the National Flood Insurance Act (42 U.S.C. 4071).

(7) [Reserved]

(8) Authority to appoint Federal Coordinating Officers under Title III, Disaster Relief Act of 1974, 42 U.S.C. 5121.

[47 FR 12173, Mar. 22, 1982, as amended at 48 FR 44545, Sept. 29, 1983; 50 FR 40005, Oct. 1, 1985; 51 FR 194, Jan. 3, 1986]

§ 2.53 Delegations not included.

Other delegations of authority have been and will be made in other FEMA regulations and by internal FEMA directives which concern internal FEMA policies and operations. These are valid delegations. Without in any way limiting the number of those delegations, and without describing all of them in this listing which is not complete, they include those:

(a) Concerning Federal personnel matters such as those concerning appointing authority, compensation, overtime, etc. These are considered internal personnel rules and are not published in this chapter but are published in a FEMA Instruction.

(b) To the General Counsel as Ethics Counselor under Part 3 of this subchapter relating to Standards of Conduct and review of financial disclosure statements.

(c) Those under Parts 5 and 6 of this subchapter relating to the Freedom of Information Act and Privacy Act.

(d) To several officials relating to authentication of records under 44 CFR 5.82.

(e) To the General Counsel and Comptroller with respect to claims under Part 11 of this subchapter.

(f) To classify information as Top Secret, Secret, or Confidential.

(g) To make certifications under the Regulatory Flexibility Act, 5 U.S.C. 605 (see 1 CFR 12(f)(3)).

(h) Those concerning environmental matters under Part 10 of this subchapter.

(i) Those concerning floodplain management and wetlands protection matters under Part 9 of this subchapter.

§ 2.54 Redelegation of authority.

(a) Authority delegated by this chapter, unless otherwise specifically provided, may be redelegated in whole or in part provided any such redelegation is in writing and approved by the officer to whom the authority is initially delegated. This restriction does not apply to a temporary redelegation of authority to a deputy or assistant to be exercised during the officer's absence.

(b) The authority to issue regulations having general applicability and future effect designed to implement, interpret or prescribe law or policy, and which are to be published in the Federal Register may be delegated or redelegated only to positions for which it is required that the incumbent be confirmed by the Senate. This does not prohibit an acting official from issuing regulations. This paragraph does not apply to rules issued under Parts 64, 65, 67, or 70 of this title, and authority to take action thereunder may be redelegated.

[50 FR 40005, Oct. 1, 1985, as amended at 51 FR 194, Jan. 3, 1986]

§ 2.55 General delegations.

(a) This section sets forth general delegations to the officers or employees named in paragraph (b) of this section.

(b) The officers authorized to exercise authorities in paragraph (c) of this section are:

Deputy Director
Federal Insurance Administrator
Associate Director, National Preparedness Programs
Associate Director, State and Local Programs and Support
Associate Director, Training and Fire Programs
Associate Director, Emergency Operations
Executive Administrator
Comptroller
Inspector General
General Counsel
Director, Office of Program Analysis and Evaluation
Directors, Staff Offices, Executive Administration
Regional Directors

(c) Each officer named in paragraph (b) of this section is authorized to:

(1) Approve official travel as temporary duty travel on official business and allowable expenses incidental thereto for employees of their respective organizational units, in accordance with the Federal Travel Regulations; except that travel to and from points outside of the Continental United States is subject to prior notification to the Director and foreign travel (i.e., travel outside the United States, its territories and possessions) is subject to prior approval of the Director. However, no officer or employee may approve his or her own travel. Travel of officers named in paragraph (b) of this section is approved by the Deputy Director or the Executive Administrator.

(2) Approve travel advances of funds through disbursing officers or imprest fund cashiers for employees of the respective organizational unit who are entitled to per diem or mileage allowance or subsistence expenses in accordance with the Federal Travel Regulations.

(3) Approve travel vouchers for employees of their respective organizational units.

(4) Issue proposed agency decisions on individual complaints of discrimination because of race, color, national origin, religion, sex or age.

(5) Promulgate internal issuances to cover areas of assigned responsibilities consistent with the policy prescribed.

(6) Approve training consisting less than $1500 (all expenses) or training less than 80 hours in duration, whichever is the more restrictive except that, this authority does not include authority to approve training involving the use of facilities of foreign governments or international organizations which must be approved by the Director; or the authority to approve acceptance by employees of contributions or awards from non-Government organizations, whether in cash or in kind, which must be approved by the Director.

(7) Adjust working hours for individual employees when there is special justification therefor that it is in the interest of FEMA or to accommodate individual needs of employees for legitimate reasons where the work of the agency will not be impeded.

(8) Approve incentive awards to subordinates, Public Service Awards, cash awards up to $1,000 for individuals and quality within-grade salary increases.

(9) Enter into and administer memoranda of understanding with respect to assigned duties.

[47 FR 12173, Mar. 22, 1982, as amended at 49 FR 5928, Feb. 16, 1984; 50 FR 40005, Oct. 1, 1985]

§ 2.56 Designation of subordinates to act.

Each officer named in § 2.55(b) is authorized to:

(a) Designate one or more subordinate employees to act for such officer during his or her absence.

(b) Designate one or more subordinate employees to serve as acting head of an organizational unit under the officer during the absence of the head of a unit or during a vacancy in the position.

DELEGATIONS TO SPECIFIC OFFICERS

§ 2.60 Deputy Director.

(a) The Deputy Director shall perform such functions as the Director may prescribe and shall act as Director during the absence or disability of the Director, or in the event of a vacancy in the Office of the Director. The Deputy Director shall chair the Management Council.

(b) The Deputy Director is delegated the authority to manage the National Defense Executive Reserve Program under section 710(e) of the Defense Production Act (50 U.S.C. App. 2260(e), including authority under Executive Order 11179.

[51 FR 194, Jan. 3, 1986]

§ 2.61 Associate Director, State and Local Programs and Support (SLPS).

Except as otherwise provided in this chapter, the Associate Director, SLPS, is authorized:

(a) To exercise the authorities of the Director pursuant to 4-106, 4-107, 4-201, and 4-202, of Executive Order 12148 of July 20, 1979.

(b) Except as provided in paragraph (c), exercise the authorities of the Director pursuant to the Disaster Relief Act of 1974 (42 U.S.C. 5121 *et seq.*) which were delegated to the Director by Executive Order 12148 of July 20, 1979. See section 4-203. Excluded from this delegation are those functions vested in the President by section 301 (relating to the declaration of emergencies and major disasters), section 401 (relating to the repair, reconstruction, restoration or replacement of Federal facilities), and section 409 (relating to food coupons and surplus commodities), which authorities were not delegated to the Director.

(c) The following authorities are excluded from the delegation in paragraph (b) of this section and are delegated to other officers of FEMA or are reserved to the Director:

(1) The authority to make recommendations to the President concerning the determination that an emergency exists pursuant to section 301(a) of the Act. See § 2.52(b)(2)(i).

(2) The authority to make recommendations to the President concerning the issuance of a major disaster declaration pursuant to section 301(b) of the Act. See § 2.52(b)(2)(ii).

(d) In the event that the Director of FEMA, is unavailable, the authority to make the recommendations referred to in paragraphs (c)(1) and (2) of this section, shall be exercised by the Deputy Director FEMA. If both the Director and the Deputy Director are unavailable, said authority shall be exercised by the Associate Director for State and Local Programs and Support.

(e) To exercise the power and authority of the Director of FEMA, as head of a Federal agency with respect to sections 302(b), 306(a) and 309 of the Disaster Relief Act of 1974 except that the authority in section 309(b) (1) and (2) shall be conducted through the Office of Personnel.

(f) To review, approve, withdraw approval and publish notice of actions with respect to radiological emergency preparedness plans submitted to FEMA.

(g) Coordinate functions of the President under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (called the Act in this § 2.61(g)) which were delegated to the Director by Executive Order 12316 of August 14, 1981. This includes:

(1) Functions vested in the President by section 101(24) of the Act to the extent they require a determination that permanent relocation of residents and businesses and community facilities is included within the term "remedy" or "remedial action" as defined in the Act;

(2) Functions vested in the President by section 104(a) of the Act to the extent they require permanent relocation of residents, businesses, and community facilities, or temporary evacuation and housing of threatened individuals not otherwise provided for;

(3) Functions under section 104(c), (d), (e), (f), and (g) of the Act to the extent delegated by section 2(f) of Executive Order 12316.

(h)—(i) [Reserved]

(j) In connection with assigned functions, exercise the following authorities of the Director under the Federal Civil Defense Act of 1950, as amended:

(1) Authority under subsections 201 (a) and (b) of the Act except that the authority to delegate civil defense responsibilities to the departments and agencies is reserved;

(2) Those under subsections 201 (c) and (d);

(3) Those under section 201(g) relating to interstate compacts;

(4) Maintenance and distribution of radiological equipment and detection devices under the fourth proviso of section 201(h);

(5) Those under section 201(i);

(6) Those under section 204;

(7) Those under section 205;

(8) Those under section 207 (this section relates to dual use).

(9) Except for subsections (a), (b) and (f) authorities under section 401 of the Act.

(k) Exercise the authority of the Director pursuant to the Earthquake Hazards Reduction Act of 1977, including any delegated by Executive Order 12148 of July 20, 1979.

(l) Exercise the authority of the Director concerning coordination of efforts to promote dam safety pursuant to section 2-103 of Executive Order 12148 of July 20, 1979.

(m) To apply the Coastal Barrier Resources Act to the Disaster Relief Act of 1974.

(n) To carry out hazard mitigation functions, including studies and research assigned under Executive Order 12148.

[47 FR 12173, Mar. 22, 1982; 47 FR 43061, Sept. 30, 1982, as amended at 48 FR 10840, Mar. 15, 1983; 49 FR 5928, Feb. 16, 1984]

§ 2.62 [Reserved]

§ 2.63 Associate Director, National Preparedness Programs (NPP).

Except as otherwise provided in this part, the Associate Director for National Preparedness Programs is authorized to exercise the authority of the Director:

(a) Concerning research; this includes but is not limited to authorities under section 201(a)(6) and (7) of the Disaster Relief Act of 1974, and section 201(d) of the Federal Civil Defense Act of 1950, as amended.

(b) Concerning planning and preparedness to reduce the consequences of major terrorist incidents under section 2-103 of Executive Order 12148.

(c) Pursuant to section 1-103 of Executive Order 12148 of July 20, 1979, as amended, including authorities delegated pursuant to the following Executive Orders.

(1) Executive Order 10421 relating to physical security of defense facilities.

(2) Executive Order 10480 relating to administration of the Defense Mobilization Program.

(3) Executive Order 10582 concerning the Buy-American Act.

(4) [Reserved]

(5) Executive Order 11912 concerning energy.

(6) Executive Order 12046 concerning telecommunications.

(7) Executive Order 11490 assigning emergency preparedness responsibilities to Federal Departments and Agencies.

(d) Pursuant to the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98b and 50 U.S.C. 98h-2) which were delegated to the Director by Executive Order 12155 of September 10, 1979, as amended.

(e) Pursuant to section 4(h) of the Commodity Credit Corporation Charter Act as amended (15 U.S.C. 714b(h) and by section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f) which functions were delegated to the Director by sections 205 and 206 of Executive Order 12148 of July 20, 1979, as amended by Executive Order 12155.

(f) Pursuant to sections 103 and 303 of the National Security Act of 1947, as amended (50 U.S.C. 404 and 405). See section 4-102 of Executive Order 12148.

(g) In connection with assigned functions, exercise the authority of the Director under sections 201, 401, and Title V of the Federal Civil Defense Act of 1950, as amended.

[47 FR 12173, Mar. 22, 1982, as amended at 51 FR 194, Jan. 3, 1986]

§ 2.64 Federal Insurance Administrator (FIA).

(a) Except as otherwise provided in this chapter, the Federal Insurance Administrator is authorized to exercise the power and authority of the Director, with respect to the National Insurance Development Program under Title XII of the National Housing Act (12 U.S.C. 1749bbb, *et seq.*).

(b) The authorities in this paragraph (b) of this section are excluded from the delegation in paragraph (a) of this section and are delegated to other officials of FEMA or are reserved to the Director.

(1) Establish and administer the National Insurance Development Fund under section 1243 of the National Housing Act (12 U.S.C. 1749bbb-13). See § 2.67(a)(18)(i).

(2) Audit the records of insurers or others under section 1244(d) of the National Housing Act (12 U.S.C. 1749bbb-14). See § 2.70(a)(7)(ii).

(3) Exercise the powers with respect to the business type budget under section 402(a) of the Housing Act of 1950 (12 U.S.C. 1249a(a)), applicable under section 1247 of the National Housing Act (12 U.S.C. 1749bbb-17). See § 2.67(a)(18)(iv).

(4) [Reserved]

(5) Report to Congress and the President under section 1234 of the National Housing Act (12 U.S.C. 1749bbb-10d). See § 2.52(b)(1)(iii).

(c) Except as otherwise provided in this part, the Federal Insurance Administrator is authorized to exercise the authority of the Director with respect to the National Flood Insurance Program (NFIP) under section 15(e) of the Federal Flood Insurance Act of 1956 (42 U.S.C. 2414(e)) and the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001 *et seq.*) and with respect to the consultation function under Executive Order 11988, "Floodplain Management" as amended.

(d) The authorities in this paragraph (d) are excluded from the delegations in paragraph (c) of this section and are delegated to other officials of FEMA or are reserved to the Director.

(1) Borrow funds from the Treasury under section 15(e) of the Federal Flood Insurance Act of 1956, as amended and under section 1309 of the National Flood Insurance Act (42 U.S.C. 2414(e) and 4016). See § 2.67(a)(18)(ii).

(2) Establish and administer the National Flood Insurance Fund under section 1310 of the National Flood Insurance Act (42 U.S.C. 4017). See § 2.67(a)(18)(iii).

(3) Report on program operation, in a biennial report to the President, under section 1320 of the National Flood Insurance Act (42 U.S.C. 4027). See § 2.52(b)(1)(ii).

(4) Make the determination concerning Federal operation of the program and the report to Congress under section 1340 of the National Flood Insurance Act (42 U.S.C. 4071). See § 2.52(b)(6).

(5) [Reserved]

(6) Audit and examine the records of flood insurance pools and insurance companies or other private organizations under section 1348(b) of the National Flood Insurance Act (42 U.S.C. 4084(b)). See § 2.70(a)(iii).

(e)(1) The Federal Insurance Administrator is authorized to perform the functions necessary to make flood insurance available pursuant to the Coastal Barrier Resources Act (Pub. L. 97-348). The Administrator is also authorized to define the terms "new construction, substantial improvement and new flood insurance coverage" as used in the Coastal Barrier Resources Act, and to issue any regulations necessary to implement this § 2.64(e).

(2) The Administrator shall exercise the authority under the Coastal Barrier Resources Act to determine those areas which are included in the Department of the Interior's designation of the Coastal Barrier Resources System, transpose DOI's designations onto FEMA's floodplain maps, and perform all other actions necessary to interpret DOI's maps.

(f) Authority to sue and be sued under section 402(c)(3) of the Housing Act of 1950 (12 U.S.C. 1749a(c)(3)) applicable under section 1247 of the National Housing Act (12 U.S.C. 1749bbb-17).

(g) Authority to be sued under section 1341 of the National Flood Insurance Act (42 U.S.C. 4072).

(5 U.S.C. 552; sec. 106, Reorganization Plan No. 3 of 1978; E.O. 12127 of March 31, 1979; E.O. 12148 of July 10, 1979, as amended; Coastal Barrier Resources Act (Pub. L. 97-348))

[47 FR 12173, Mar. 22, 1982, as amended at 48 FR 44545, Sept. 29, 1983; 49 FR 5928, Feb. 16, 1984]

§ 2.65 Associate Director, Emergency Operations (OP).

The Associate Director, Emergency Operations, is authorized to exercise the authority of the Director to:

(a) Appoint uniformed guards at the Special Facility as special police of the Federal Emergency Management Agency pursuant to Pub. L. 80-566, as amended, 40 U.S.C 318 and a delegation from the Administrator of General Services;

(b) Made provisions for transportation in connection with the continuity of government program to the same extent and in the same manner as permitted the Secretary of a Military Department under 10 U.S.C. 2632;

(c) Exercise, in connection with the performance of assigned functions of (i) providing telecommunications and data processing systems, and (ii) operating the Special Facility, the authorities in sections 201 and 401 of the Federal Civil Defense Act, section 202(a), (c), and (d) of the Disaster Relief Act of 1974, and sections 1-101, 4-102, 4-103, and 4-104 of Executive Order 12148;

(d) Conduct activities pursuant to section 203 of Reorganization Plan No. 3 of 1978 as further amplified in section of 1-103(b) and 1-105 of Executive Order 12127 of March 31, 1979 (Emergency Broadcast System); and

(e) Exercise the authority delegated the Director by Executive Order 12241 concerning the National Contingency Plan developed under section 304 of Pub. L. 96-295.

[48 FR 10840, Mar. 15, 1983, as amended at 49 FR 5928, Feb. 16, 1984]

§ 2.66 Associate Director, Training and Fire Programs (TFP).

The Associate Director for Training and Fire Programs is authorized to exercise the authority of the Director with respect to training and education and fire prevention and control matters. This includes but is not limited to:

(a) Section 201(e) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281(e)) including, but not limited to, authority to approve requests for reimbursement and related documents for obligation of payment of travel and per diem expenses of students under subsection 201(e);

(b) Training under subsection 201(a)(2) of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5131(a)(2)). Further, the authorities contained in paragraphs (a), (b) and (g) of section 7 of the Federal Fire Prevention and Control Act shall be exercised only with the prior approval of the Director and the authority in subsections 7(c)(2) and (c)(4) shall be conducted through the Office of personnel;

(c) Except as otherwise provided in this subpart, exercise of the authorities contained in sections 1 through 27 of the Federal Fire Prevention and Control Act of 1974, as amended (15 U.S.C. 2201 *et seq.*). This delegation does not include those under sections 18 and 23 which were not transferred to the Director by Reorganization Plan No. 3 of 1978 nor those under repealed section 25. Further the authorities contained in sections 11, 16 and 21(c) of the Federal Fire Prevention and Control Act of 1974, are excluded from this delegation and are reserved to the Director or delegated to other officials of FEMA. See §§ 2.52(b)(1)(i), 2.68(p), and 2.70(a)(6)(i).

[48 FR 10840, Mar. 15, 1983, as amended at 48 FR 30386, July 1, 1983; 49 FR 33879, Aug. 27, 1984]

§ 2.67 Director, Acquisition Management.

The Director, Acquisition Management is authorized to:

(a)(1) Exercise authority under section 104(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 delegated to the Director by section 2(f) of Executive Order 12316;

(2) Exercise authority of the Director concerning extra-ordinary contractual actions under paragraph 21 of Executive Order 10789.

(3) Exercise authority delegated to the Director by Executive Order 12352 and act as procurement executive.

(b)(1) Make purchases and contracts by advertising for equipment and supplies, administrative equipment, office supplies, professional services, transportation of persons and property, and nonpersonal services, and determine that the rejection of all bids is in the public interest;

(2) Negotiate purchases and contracts for equipment and supplies, professional services, transportation of persons and property, and non-personal services without advertising; and make and issue determinations related thereto pursuant to section 302(c) (1)-(10), (14) and (15) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c) (1)-(10), (14) and (15)) and 40 U.S.C. 541-544 with respect to contracting for services of Architects Engineers;

(3) Enter into and administer interagency agreements under the Economy Act or any other such agreement involving obligation of funds;

(c) Notwithstanding any general delegation of statutory authority in this part to another officer of FEMA, if the authority delegated in the general statutory delegation contains procurement authority that authority is delegated solely to the Director, Acquisition Management, with authority to redelegate to any employee of FEMA. As used in this paragraph (c) the term "procurement" includes acquisition from a recipient including a State or local government, of property or services for the direct benefit or use of the Federal Government. This includes authority under section 201(h) of the Federal Civil Defense Act but excludes authority under section 1362 of the National Flood Insurance Act.

(d) Notwithstanding any general delegation of authority in this part to another officer of FEMA, other than the delegation to Regional Directors under § 2.71, if the authority delegated contains authority to award discretionary grants that authority is delegated to the Director, Acquisition Management, who is authorized to exercise the authority of the Director with respect thereto. The Director, Acquisition Management, may redelegate this authority to any employee of FEMA. Discretionary grants include those instruments which are awarded to a selected or limited number of recipients deemed best qualified based upon criteria designed for the conduct of a specific project. This can include governments. Discretionary grants do not include those awarded to recipients for which:

(1) The recipient or class of recipient is mandated by legislation or regulation;

(2) The amount of the instrument or the amount of the program is established by legislation and discretion in the award process is limited; or

(3) There is no choice in the purpose of the award or whether to make the award. The delegation to the Regional Directors under § 2.71 to implement various programs is not affected by this delegation to the Director, Acquisition Management.

[49 FR 5928, Feb. 16, 1984]

§ 2.68 Comptroller.

The Comptroller is authorized to exercise any authority of the Director to:

(a) Approve requisitions for disbursing funds, reports of current accounts rendered by disbursing officers, and other financial and accounting documents involving FEMA, the General Accounting Office, and the Department of the Treasury, and Office of Management and Budget.

(b) Certify to the General Accounting Office (GAO) any charge against any officer or agent entrusted with public property, arising from any loss and accruing by his fault, to the Government as to the property so entrusted to him.

(c) Make determinations concerning performance of service, the periods of such service, and the amounts of remuneration for social security purposes.

(d) Authorize officers and employees to certify vouchers.

(e) Approve apportionment and reapportionment requests; reports on appropriation accounts; and reports on status of apportionments for corporations and enterprises.

(f) Approve reports on budget status, obligation basis, and accrual basis, as required by the Antideficiency Act.

(g) Issue budget allocation advice to Associate Directors, Administrators, Office Directors or equivalent, and Regional Directors. Officials who receive budget allocations shall limit obligations to amounts permitted by budget allocations. Officials who incur obligations or make expenditures in excess of their budget allocations are subject to administrative disciplinary actions, as circumstances warrant.

(h) Receive and credit amounts received to the applicable appropriation of FEMA or to the miscellaneous receipts account.

(i) Request cashier designation and resolution from the Department of the Treasury, and designate persons to serve in FEMA.

(j) Maintain official FEMA payroll, retirement, leave and travel records.

(k)(1) Approve travel and expenses incurred pursuant to relocation of the duty station of a FEMA employee.

(2) Approve invitational travel.

(l) Establish and administer the National Insurance Development Fund under section 1243 of the National Housing Act (12 U.S.C. 1749bbb-13).

(m) Borrow funds from the Treasury under section 15(e) of the National Flood Insurance Act, and under section 1309 of the National Flood Insurance Act (42 U.S.C. 2414(e) and 4016).

(n) Establish and administer National Flood Insurance Fund under section 1310 of the National Flood Insurance Act, (42 U.S.C. 4017).

(o) Exercise the powers under section 402(a) of the Housing Act of 1950 (12 U.S.C. 1749a(a)) relating to submission of a business type budget applicable under section 1247, the National Housing Act (12 U.S.C. 1749bbb-17).

[48 FR 10841, Mar. 15, 1983, as amended at 49 FR 5929, Feb. 16, 1984; 50 FR 40005, Oct. 1, 1985]

§ 2.69 General Counsel (GC).

The General Counsel is authorized to exercise the authorities of the Director to:

(a) Accept service of process on behalf of the Agency, and on behalf of its officials and employees in connection with performance of their official duties.

(b) Determine the agency's position with respect to litigation and refer matters directly to the Attorney General for prosecution or the initiation of litigation.

(c) Determine the government's position in connection with any dispute before a Board of Contract Appeals, including the authority to settle or adjust any such claim.

(d) Consider, compromise and settle tort claims against FEMA, but any award, compromise, or settlement of more than $25,000 requires the prior written approval of the Attorney General or designee. See 44 CFR Part 11.

(e) Serve as the Agency Ethics Counselor.

(f) Make technical corrections to all FEMA documents, including rules and regulations submitted to the FEDERAL REGISTER.

(g) Consider, compromise and settle personnel claims of less than $15,000 against FEMA.

(h) Waive claims of the United States against a person arising out of pay and allowances to an employee of FEMA in amounts of less than $500, and in accordance with the requirements of 5 U.S.C. 5584, and the implementing regulations and standards of the Comptroller General.

(i) The General Counsel is authorized to exercise the authorities of the Director to enter into ratification agreements at the direction of the Department of Justice in order to insure that the Federal Emergency Management Agency's subrogation interest will be represented.

[47 FR 12173, Mar. 22, 1982, as amended at 48 FR 10842, Mar. 15, 1983; 48 FR 30386, July 1, 1983; 48 FR 44542, Sept. 29, 1983]

§ 2.70 Inspector General (IG).

(a) The Inspector General is authorized to exercise any authority of the Director with respect to:

(1) Auditing the accounting, financial, and other operations of FEMA, including grants, contracts, cooperative agreements and other expenditures of funds, and obtaining information relating to the effectiveness of those operations, grants, contracts, cooperative agreements and expenditures.

(2) Auditing the books and records of grantees of FEMA and contractors doing business with FEMA, or of subcontractors or subgrantees as appropriate and obtaining information re-

lating to the effectiveness of those operations, grants, contracts, cooperative agreements and expenditures.

(3) Authorizing officers and employees having investigatory functions, while engaged in the performance of their duties in conducting investigations, to administer oaths.

(4) Taking possession from FEMA employees of any official FEMA documents, including, but not limited to, books, and workpapers necessary to conduct investigations.

(5) Conducting those investigations necessary to complete security determinations in connection with requirements, as specified in Executive Order 10450, of April 27, 1953, and by Executive Order 12356.

(6) Carrying out certain authorities specifically reserved from the delegations to the United States Fire Administrator in § 2.62 and to the Federal Insurance Administrator in § 2.64 as follows:

(i) Auditing pursuant to section 21(c) of the Federal Fire Prevention and Control Act of 1974, as amended.

(ii) Auditing the records of insurors or others under section 1244(d), of the National Housing Act (12 U.S.C. 1749bbb.14).

(iii) Auditing and examining the records of flood insurance pools and insurance companies or other private organizations under section 1348(b) (42 U.S.C. 4084(b)).

(7)(i) Investigations of allegations of specific instances of wrongdoing, waste or malfeasance on the part of any FEMA employee, any contractor or subcontractor doing business with FEMA, any grantee or other person who may be involved in FEMA activities.

(ii) Investigations of any fraudulent request for assistance, request for insurance, or fraudulent claim against FEMA by any person.

(iii) Any subpoena power for the collection of information.

(8) Making referrals to the Department of Justice under 28 U.S.C. 535.

(b) Notwithstanding any general delegation of statutory authority to another officer of FEMA, if such authority delegated in the general delegation contains an audit authority, that authority is delegated to the Inspector General.

[47 FR 12173, Mar. 22, 1982, as amended at 49 FR 33879 Aug. 27, 1984; 50 FR 40005, Oct. 1, 1985]

§ 2.71 Regional Directors.

(a) Except as otherwise provided in this part, each Regional Director is authorized to exercise the authority of the Director, FEMA, pursuant to the provisions of sections 1-102, 4-201, and 4-202 of Executive Order 12148 of July 20, 1979.

(b) Except as otherwise provided in this part, and in accordance with program guidance from the responsible FEMA Program Director, each Regional Director is authorized to excercise the authority of the Director pursuant to the Disaster Relief Act of 1974, which were delegated to the Director by section 4-203 of Executive Order 12148 of July 20, 1979.

(c) The following authorities are excluded from the delegation under paragraph (b) of this section and are delegated to other officials of FEMA or are reserved to the Director:

(1) The authority to issue rules and regulations pursuant to the Disaster Relief Act of 1974.

(2) The authority to make recommendations to the President concerning the determination that an emergency exists pursuant to section 301(a) of the Act.

(3) The authority to make recommendations to the President concerning the issuance of a major disaster declaration pursuant to section 301(b) of the Act.

(4) The authority contained in section 407 of the Act concerning unemployment assistance.

(5) The authority to appoint a Federal Coordinating Officer pursuant to section 303 of the Act.

(6) The authority to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service and other relief or disaster assistance organizations pursuant to section 312(b) of the Act.

(7) The authority to determine that a State plan of self-insurance is satis-

factory pursuant to section 314 of the Act.

(8) The authority to approve a community disaster loan pursuant to section 414 of the Act.

(9) The authority to provide assistance for the suppression of fires pursuant to section 417 of the Act.

(d) Each Regional Director is authorized to exercise the power and authority of the Director, FEMA, with respect to sections 201(d), 302(b), 306(a), and 309 of the Disaster Relief Act of 1974 except that the authority in section 309(b) (1) and (2) shall be conducted through the Office of Personnel.

(e) Each Regional Director is authorized to exercise the authorities of the Director, FEMA, with respect to:

(1) Approval, disapproval, modification or amendment of request from the States related to financial contributions for civil defense materials and facilities and personnel and administrative expenses pursuant to sections 201(i) and 205 of the Federal Civil Defense Act of 1950, as amended.

(2) Conduct of programs for the States, designated by the Associate Director for State and Local Programs under the Federal Civil Defense Act of 1950 as amended including execution of the necessary document to implement and conduct the program.

(f) In exercising any authority delegated to them, the Regional Directors shall coordinate (to the maximum extent practicable) technical matters and routine actions with appropriate program officials on the staffs of the various Administrators, Associate Directors, General Counsel, Inspector General or Office Directors who shall render policy guidance and program direction.

(g) Each Regional Director is authorized to accept service of process on behalf of the agency and its officials. Upon so doing, the Regional Director shall notify the General Counsel as soon as possible.

(h) Each Regional Director is authorized to approve reimbursement to the extent appropriated funds are available for obligation by the Regional Director, for expenses of attendance of cooperating officials and individuals at meetings concerned with the work of emergency preparedness, provided:

(1) That the Appropriations Act for the fiscal year in which the obligation is incurred contains the same authorizing language that is found in Pub. L. 96–103 with respect to such travel, and

(2) That the authority exercised under this delegation is subject to the Federal Travel Regulations and per diem rates as may from time-to-time be established by the Administrator of General Services.

§ 2.72 Director of Administrative Support.

The Director, Administrative Support, is authorized to:

(a) Manage records and files within FEMA, including records creation, organization, maintenance, and disposal. Place advertisements in newspapers pursuant to 44 U.S.C. 3702;

(b) Assign and reassign real and personal property other than contributions loan property within FEMA. Exercise authority under section 201(j) of the Federal Civil Defense Act of 1950, as amended;

(c) Provide for accountability for property;

(d) Issue determinations of excess property other than contributions loan property and transfer of same as required;

(e) Make purchases and contracts for procurement of printing and binding services in accordance with the current government printing and binding regulations of the Joint Committee on Printing, and Title 44, United States Code.

[49 FR 5929, Feb. 16, 1984]

§ 2.73 Director of Personnel.

Notwithstanding any general delegations of authority in this part to another officer of FEMA, if authority delegated in the general delegation contains personnel authorities, that authority is delegated to the Director of Personnel with authority to redelegate to any employee of FEMA. As used in the paragraph the term "personnel" includes development, implementation, administration and management of personnel policies and programs, including position management and classification, recruitment, placement, salary administration, labor management relations, merit pay, special program (DAE, Shelter Survey), performance appraisal, incentive awards, discipline, retirement, health insurance, training and career development, and in conjunction with the Equal Opportunity Officer, equal employment opportunity.

[49 FR 5929, Feb. 16, 1984, as amended at 51 FR 194, Jan. 3, 1986]

Subpart C—OMB Control Numbers

§ 2.80 Purpose.

The purpose of this subpart is to display OMB control numbers assigned to FEMA's information collection requirements.

[49 FR 36503, Sept. 18, 1984]

§ 2.81 OMB control numbers assigned to information collections.

This section collects and displays the control numbers assigned to information collection requirements of FEMA by OMB pursuant to the Paperwork Reduction Act of 1980. FEMA intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

44 CFR part or section where identified and described	Current OMB control No.
9.11(e)	3067-0077
11.36	3067-0122
11.54	3067-0122
11 Subpart D	3067-0167
14	3067-0149
59.22	3067-0018
59.24	3067-0020
61.3	3067-0022
61 App A(1) A(2)	3067-0022
62.23	3067-0169
64.3	3067-0020
65.3	3067-0148
66	3067-0146
67.7	3067-0148
70.3	3067-0147
71	3067-0120
75.11	3067-0127
80, 81, and 83	3067-0061
150	3067-0150
150.3	3067-0150
151	3067-0141
205.33	3067-0113
205.34	3067-0113
205.52	3067-0124
205.54	3067-0146
205.54	3067-0163
205.54(j)	3067-0145
205.59	3067-0166
205.94	3067-0034
205.96	3067-0026
205.115	3067-0149
205.116	3067-0151
205.200(b)	3067-0046
205.207	3067-0046
205.208	3067-0046
205 Subpart G	3067-0066
302.2	3067-0138
302.3(b)	3067-0123
306	3067-0074
332.3(d)	3067-0152
332.5	3067-0152

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Authority: Title II of Ethics in Government Act of 1987, 5 U.S.C. App.; 5 CFR Parts 735, 737; E.O. 11222.

Source: 50 FR 38985, Sept. 26, 1985, unless otherwise noted.

Subpart A—General

§ 3.1 Purpose.

(a) The purpose of this part is to set forth Federal Emergency Management Agency (FEMA) policy and procedure relating to employee responsibilities and conduct.

(b) 5 CFR 735.101 states in part: "The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees through informed judgment is indispensable to the maintenance of these standards."

(c) This part effectuates the requirements in Subpart A of 5 CFR Part 735 that FEMA issue regulations covering FEMA employees and special Government employees which: (1) Implement Executive Order 11222 of May 8, 1965, and 5 CFR Part 735 and (2) prescribe additional standards of ethical and other conduct appropriate to the particular functions of FEMA. This part also effectuates the requirements placed on FEMA by the Ethics in Government Act of 1978, and implementing regulations of OPM.

§ 3.2 Applicability and scope.

(a) This part applies to all persons included within the terms "employee" and "special government employee" as defined in § 3.3. This part also applies to all former employees and special government employees of FEMA.

(b) This part prescribes general standards of conduct for FEMA employees. It is not, however, inclusive. Other FEMA regulations, instructions and issuances may include standards of ethical behavior. Employees must consult these. Among these instructions are those related to: (1) The Freedom of Information Act, (2) the FEMA Employee Security Program, and (3) the FEMA Acquisition Process.

(c) This part does not apply unless there is specific provision to that effect to standards of ethical conduct required by law or regulation of FEMA contractors or grantees, nor does it apply to organizational conflicts of interest.

§ 3.3 Definitions.

For purposes of this part:

(a) "FEMA" means the Federal Emergency Management Agency.

(b) "Director" means the Director, FEMA.

(c) "Employees" includes every employee of FEMA, Headquarters and field, but does not include a special Government employee nor does it include a member of the National Defense Executive Reserve except during such time as the member is serving as an employee of FEMA. "Employee" also includes disaster assistance employees hired pursuant to Pub. L. 93-288 during such time as the employees are on active duty status.

(d) "Special Government employee" includes an employee of FEMA who is retained, designated, appointed, or employed to perform, with or without compensation, and for not to exceed 130 days during any period of 365 consecutive days, temporary duty on either a full time or intermittent basis. See 18 U.S.C. 202.

(e) "Person" includes an individual corporation, company, association, firm partnership, society, joint stock company, or other organization or institution.

(f) "Ethics Counselor" means the FEMA officer designated to administer for FEMA Titles II and V of the Ethics in Government Act of 1978 (Pub. L. 95-521), and it also means the FEMA Official who serves as the Agency's designee to OGE on matters covered by Parts 735 and 737 of Title 5 of the Code of Federal Regulations and who coordinates and directs the FEMA ethics counseling service. In FEMA this is the General Counsel.

(g) "OGE" means the Office of Government Ethics in the Office of Personnel Management (OPM).

(h) "Head of Unit" as used herein includes the Deputy Director, Associate Directors, Regional Directors, Federal Insurance Administrator, and the United States Fire Administrator. For purposes of this part, the Deputy Director is "Head of Unit" for any organizational component of FEMA not included in the above listing. During the absence of, or a vacancy in, the Office of the Deputy Director, the Director may name another official in FEMA to exercise this function.

§ 3.4 Notification to employees and special Government employees.

(a) The provisions of this part as it is revised, shall be brought to the attention of, and made available to, each employee and special Government employee by furnishing a copy at the time of final publication. The provisions of this part shall further be brought to the attention of such employees at least annually thereafter.

(b) The provisions of this part shall be brought to the attention of each new employee and new special Government employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Director may prescribe.

§ 3.5 Interpretation and advisory service.

(a) The Ethics Counselor serves as FEMA's designee to OGE on matters covered by this part and by 5 CFR Parts 735 and 737. The Ethics Counselor is responsible for coordinating FEMA's counseling services and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available.

(b) Such deputy counselors as may be required shall be designated by the General Counsel from among the staff of the Office of General Counsel to give authoritative advice and guidance to current, former and prospective employees and special Government employees who seek advice and guidance on questions of conflicts of interest and on other matters covered by this part.

(c) To assist in avoiding situations of noncompliance the Ethics Counselor shall, in accordance with section 206(b)(7) of the Ethics in Government Act of 1978 (Pub. L. 95-521), maintain a list of those circumstances or situations which have resulted or may result in noncompliance with laws or regulations concerning conflicts of interest and shall furnish a published list to employees subject to Title II of the Ethics in Government Act of 1978. Appendix B contains a list of such conflict of interest situations.

(d) The Ethics Counselor shall provide advice promptly to former FEMA employees and special Government employees who make inquiry on any matter arising under the post employment conflict of interest regulations of OPM (5 CFR Part 737) and this part.

§ 3.6 Employee responsibilities.

(a) Each employee and special Government employee has a positive duty to become acquainted with the numerous statutes relating to the ethical and other conduct of employees of FEMA and special Government employees of FEMA and of the Government. Appendix A of this part contains a listing of many of the more important statutory provisions of general applicability. In case of doubt on any question of statutory application to fact situations that may arise, an individual should consult the text of the statutes, Executive Orders or regulations and may consult the Ethics Counselor or Deputy Counselor, who have available for review copies of laws, Executive Orders, agency regulations, and pertinent issuances by OPM on this subject.

(b) In any case where any employee or special Government employee, regardless of grade or position, finds that participation in a particular matter or transaction might be considered to involve a direct or indirect financial interest, such individual shall promptly submit a request for disqualification to act in the matter or for other proposed remedial action in writing to the appropriate supervisor. This request will be acted on in accordance with § 3.8.

§ 3.7 Sanction for violation.

A violation of this part by an employee or special Government employee may be cause for appropriate disciplinary action, or remedial action, which may be in addition to any penalty prescribed by law.

§ 3.8 Disqualification procedure.

(a) This section applies whether or not the conflict or apparent conflict of interest appears on any disclosure form and it applies to any employee or special Government employee, regardless of grade or position. It applies to a request for disqualification to act made pursuant to paragraph (b) of this section.

(b) All disqualification or remedial action requests are referred to the Ethics Counselor. If the Ethics Counselor reaches an opinion, based on information submitted, that an employee or special Government employee is not in compliance with applicable laws and regulations, then the Ethics Counselor shall so notify the individual of this opinion. The Ethics Counselor shall act on requests by individuals but is not required to approve the specific remedial action proposed. The individual shall be given a reasonable opportunity for an oral or written response. The Ethics Counselor may also ask for additional information.

(c) The Ethics Counselor shall consider the individual's response, and reach an opinion as to whether or not the individual is in compliance. If the opinion is that the individual is not in compliance with applicable laws and regulations, the Ethics Counselor shall notify the individual, and after consultation with the individual (if practical) determine and notify the individual of what steps if any, and the date for completion, would be appropriate for assuring compliance with the laws and regulations.

(d) These steps may include one or more of the following "ethics agreements":

(1) Divestiture;

(2) Restitution;

(3) Resignation from a non-federal business or other entity;

(4) The establishment of a blind trust;

(5) Request for waiver under section 208(b) of Title 18, United States Code; or

(6) Voluntary request for transfer, reassignment, disqualification or recusal from a particular assignment, or limitation of duties.

(e) If any of the remedial actions indicated in paragraph (d)(6) of this section is contemplated, appropriate personnel officers of FEMA shall be notified and shall participate in the determination of the action proposed to be effected.

(f) In the case of nominees to positions requiring the advice and consent of the Senate, evidence of the actions taken by the nominee to carry out an ethics agreement shall be submitted immediately by the Ethics Counselor to OGE and the Senate confirmation committee. In the case of incumbents of positions requiring the advice and consent of the Senate, evidence of actions taken shall be submitted immediately by the Ethics Counselor to OGE. Where the Ethics Counselor is neither a nominee nor an incumbent, such official must send evidence of his/her actions to OGE. In the case of other reporting individuals, evidence of action taken consists of any of the following:

(1) A copy of the recusal agreement containing the specific matters to which the recusal shall apply, a statement of the process or method by which the recusal shall be enforced within FEMA, and positions of those involved in its execution (i.e., the individual's immediate subordinates and supervisors);

(2) Written notification that the divestiture, resignation, restitution, or reassignment has occurred;

(3) A copy of the waiver, signed by the appropriate supervisory official;

(4) Information required by OGE regulations for its approval of blind trust instruments.

(g) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (c) of this section, the matter shall be referred to the Director.

Subpart B—Conduct and Responsibilities of Employees

§ 3.10 Administrative extension of statutory limitations.

The provisions of the statutes identified in this part, including those in Appendix A, which relate to the ethical and other conduct of Federal employees are adopted and will be enforced as administrative regulations, violations of which may, in appropriate cases, be the basis for disciplinary action, including removal. The fact that a statute which may relate to employee conduct is not identified in this part does not mean that it may not be the basis for disciplinary action against an employee.

§ 3.11 Prescribed actions.

An employee shall avoid any action whether or not specifically prohibited by this subpart which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels;

(f) Affecting adversely the confidence of the public in the integrity of the Government;

(g) Discriminating contrary to any law, rule or regulation, against any other employee, or applicant for employment, on the grounds of race, color, religion, national origin, sex, age, handicapping condition, marital status, or political affiliation;

(h) Excluding contrary to any law, rule or regulation, any person from participating in, or denying to any person the benefits of, any program or activity administered by FEMA on the grounds of race, color, religion, national origin, handicapping condition, age, sex, marital status or political affiliation;

(i) Knowingly participating, while conducting official business, in or attending any segregated meetings, or meetings held in segregated facilities, from which persons are excluded because of race, color, religion, sex or national origin, etc.

§ 3.12 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the employee's Government duties and responsibilities as a Federal employee; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through Government employment.

(b) No employee shall participate in any manner, on behalf of the United States, in the negotiation of contracts, the making of loans and grants, the granting of subsidies, the fixing of rates, or the issuance of valuable permits or certificates, or in any investigation or prosecution, or in the transaction of any other official business which affects chiefly a person:

(1) By whom the individual has been employed or with whom the individual has had any economic interest within the preceding two years, or

(2) With whom the individual has any economic interest or any pending negotiations concerning a prospective economic interest, except with express prior authorization in writing by the Director.

(c) Contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

(d) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order, OPM regulation (5 CFR Parts 735 and 737) or the regulation in this part.

(e)(1) The financial (or economic) interests described below are, unless otherwise determined by the Ethics Counselor in specific cases, too remote or too inconsequential to affect the integrity of an employee's services, and are thereby exempted from the prohibitions of 18 U.S.C. 208(a), and the holding of such an interest does not exclude such employee's participation in the transaction of any official business involving such financial or economic interest;

(i) Deposits in a bank, savings and loan association, building association, credit union or similar financial institution; or policies held with an insurance company;

(ii) Any holding in a widely held mutual fund, or regulated investment company which does not specialize in any particular industry;

(iii) Continued participation in a bona fide group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plan are vested and require no additional services by the employee or further payments to the plan by the organization with respect to the services of the employee. To the extent that such plans are profit sharing or stock bonus plans, this exemption shall not apply.

(iv) Continued participation in bona fide pension or retirement plans may be deemed to affect the integrity of an employee's services. Whether such financial interests are exempted from the prohibitions of 18 U.S.C. 208(a) must be determined by the Ethics Counselor on a case-by-case basis.

(2) These exempted financial interests should, however, be reported by employees on disclosure forms to the extent prescribed in Subpart D of this part.

(3) For purposes of this part unless otherwise provided in law, regulation, or on any form requesting disclosure, the interest of a spouse, dependent child, or other member of an employee's immediate household in considered to be an interest of the employeee. For the purpose of this section, "member of an employee's immediate household" means those relations who are residents of the employee's household.

(f) Paragraph (b) of this section does not apply if the officer or employee first advises the Ethics Counselor in writing of the nature and circumstances of the matter, makes full disclosure of the financial interest, and receives in advance a written determination by such Ethics Counselor or Deputy Counselor that such interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee.

(g) The provisions of this section do not limit or add to the provisions of any disclosure requirements under Subpart D of this part.

§ 3.13 Outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her Government employment, and which might result in a conflict or apparent conflict between the private interests of the employee and the official Government duties and responsibilities. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, conflicts of interest;

(2) Outside employment which tends to impair the mental or physical capacity to perform Government duties and responsibilities in an acceptance manner;

(3) Outside activities that may be construed by the public to be the official acts of FEMA;

(4) Activities that establish relationships or property interests that may result in a conflict between one's private interests and official duties;

(b) Full-time employees and part-time employees with a regularly scheduled tour of duty must obtain the prior written approval of the Ethics Counselor or Deputy Counselor before engaging in outside employment in the same professional field as that of the individual's official position. All such employees must obtain written approval on an annual basis.

(c) Although teaching, lecturing, and writing are outside employment, employees are encouraged to engage in such activities so long as they are not prohibited by law, Executive Order, OPM regulations or this part.

(d) An employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government.

(e) Any full-time employee mentioned in § 3.60 of this part, whose appointment is required to be made by and with the advice and consent of the Senate, may not have earned income in any calendar year attributable to such year in excess of 15% of his or her salary.

(f) No employee, including the Director, shall receive outside compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of FEMA, or which draws substantially on official data or ideas which have not become part of the body of public information.

(g) The use of an employee's name and title in connection with articles for publication which bear upon work in FEMA is permissible only if approval is obtained from the Ethics Counselor or Deputy Counselor.

(h) This section does not preclude an employee from:

(1) Participation in the activities of National or State political parties not proscribed by law.

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 3.14 Gifts and gratuities.

(a) Except as otherwise provided in this section an employee shall not solicit or accept directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with FEMA;

(2) Conducts operations or activities that are regulated by FEMA; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions of paragraph (a) of this section do not apply in the following cases:

(1) Obvious family or personal relationships, such as those between the parents, children, or spouse of the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value (fifteen dollars or less) on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value (fifteen dollars or less).

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself/herself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 3.13 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, such reimbursement may be accepted only by the agency and not by the individual employee. Such expenses may be accepted by FEMA only in limited situations as provided by statute. Therefore, prior to engaging in travel for which reimbursement from a private source is planned, the written approval of the Ethics Counselor must be obtained. If such approval is obtained, however, this paragraph does not allow an employee to be reimbursed, or payment to be made on his/her behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under FEMA orders when reimbursement is proscribed by decisions of the Comptroller General. FEMA may also accept reimbursement for travel or expenses incident to travel subject to the restrictions of this section for the actual expenses of an accompanying spouse in connection with an employee's travel.

§ 3.15 Use of Government property, vehicles and communications systems.

(a) An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities.

(b) Each employee shall protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

(c) An employee shall not use, or authorize the use of, Government owned or leased motor vehicles or aircraft for other than official purposes (31 U.S.C. 1344, 1349).

(d) An employee shall not use the Federal Telecommunications System or similar system, or commerical telephone facilities for official long-distance calls unless specifically authorized to do so. Use of these facilities for purposes other than the conduct of official business is also prohibited, except in cases of emergency.

[50 FR 38985, Sept. 26, 1985, as amended at 51 FR 34604, Sept. 30, 1986]

§ 3.16 Misuse of information.

(a) *Use of inside information.* For the purpose of furthering a private interest, an employee shall not, except as provided in § 3.13, directly or indirectly use, or allow the use of, information which has been or has the appearance of having been obtained through or in connection with Government employment and which has not been made available to the general public.

(b) *Coercion.* An employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to self or another person, particularly one with whom the employee has family, business, or financial ties.

(c) *Disclosure of restricted information.* Except as authorized by law, or FEMA regulation, including that related to the Freedom of Information Act, no employee shall divulge restricted commercial or economic information, or restricted information concerning the personnel or operations including procurement actions of any Government agency, or release any such information in advance of the time prescribed for its authorized release.

§ 3.17 Gambling, betting and lotteries.

An employee shall not, except as otherwise lawfully authorized, participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operations of a gambling device; in conducting a lottery or pool; in a game for money or property; or in selling or purchasing a numbers slip or ticket.

§ 3.18 Indebtedness.

(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For purposes of this section "a just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which, in the view of FEMA, does not under the circumstances, reflect adversely on the Government as employer.

(b) In the event of dispute between an employee and an alleged creditor, this section does not require FEMA to determine the validity or amount of the disputed debt.

§ 3.19 General conduct prejudicial to the Government.

(a) Officers and employees of the Federal Government are servants of the people. Because of this, their conduct must, in many instances, be subject to more restrictions and to higher standards than may be the case in certain private employments. They are expected to conduct themselves in a manner which will reflect favorably upon their employer. Although the Government is not particulary interested in the private lives of its employees, it does expect them to be honest, reliable, trustworthy, and of good character and reputation. They are expected to be loyal to the Government, and to the department or agency in which they are employed.

(b) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(c) Each employee shall act in a manner that facilitates the effective accomplishment of the work of FEMA, observing at all times the requirements of courtesy, consideration, and promptness in dealing with the public and with persons or organizations having business with FEMA.

§ 3.20 Intermediaries and product recommendation.

Except as authorized in connection with the performance of official duties, no employee shall recommend or suggest the use of any particular or identified nongovernmental intermediary to deal with FEMA nor shall an employee recommend any device or product tested by or for, or used by FEMA, or for which FEMA provides financial assistance.

§ 3.21 Membership in organizations.

(a) An employee may not, in his or her official capacity as an employee of FEMA, serve as a member of a non-federal or private organization except where statutory authority exists, or where the Director has determined, in writing, that such service would be beneficial to FEMA and consistent with such employee's service as a FEMA employee.

(b) The foregoing is subject to the following. An employee may, and is encouraged to serve in an individual capacity as a member of a non-federal or private organization, particularly those engaged in civic or community affairs on a non-political, non-profit basis, provided that:

(1) Membership does not violate any restriction, law, or regulation, including this part, and

(2) The employee's official title or organization connection is not shown on any listing or presented in any activity of the organization in such a manner as to imply that the employee is acting in an official capacity. Publication in any manner of an employee's official title or FEMA organization connection by a private or non-federal organization must be approved in writing by the Ethics Counselor.

(c) An employee may be designated in writing to serve as a liaison representative of FEMA to a non-Federal or private organization when the Director, an Associate Director, or a Regional Director, as appropriate, has determined that such service would be beneficial to FEMA and provided that:

(1) The activity relates to the work of FEMA;

(2) The employee does not participate by vote in the policy determinations of the organization;

(3) FEMA is in no way bound by any vote or action taken by the organization.

§ 3.22 Use of intoxicants.

An employee shall not use intoxicants habitually, to excess (5 U.S.C. 7352). Intoxicants shall not be consumed on Government-owned or leased premises unless approved by the Director. An employee found using, or under the influence of, intoxicants while at work will be subject to disciplinary action.

§ 3.23 False statements.

An employee shall not, knowingly and willfully, conceal or cover up a material fact, or make any false, or fictitious statement in connection with any official matter, document, or record (18 U.S.C. 1001, 2073).

§ 3.24 Care of official records and documents.

An employee shall not, willfully and unlawfully, conceal, remove, mutilate, falsify, or destroy any Government document or record (18 U.S.C. 285, 2071).

§ 3.25 Disclosure of information about an individual.

(a) All employees who are involved in the design, development, operation, or maintenance of a system of records or who have access to a system of records shall familiarize themselves with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and FEMA regulations implementing the Privacy Act of 1974 (44 CFR Part 6) and FEMA directives issued thereunder and apply these requirements to all systems of records.

(b) No officer or employee shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is to a recipient specified in paragraph (c) of this section. The term "record," for purposes of this section, means any item, collection or grouping of information about an individual that is maintained by an agency, including but not limited to education, financial transactions, medical history, and criminal or employment history, and that contains the name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice-print, or photograph. The term "system of records" means a group of any records under the control of FEMA from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The term "routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected. The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence. The term "agency" is defined in 5 U.S.C. 552(e).

(c) An employee may disclose any record which is contained in a system of records without a written request by and without the prior written consent of the individual to whom the record pertains if the disclosure is:

(1) To those employees of the agency which maintains the record who have a need for the record in the performance of their duties.

(2) Pursuant to section 552 of Title 5 U.S.C. (Freedom of Information Act);

(3) For a routine use as defined in section (a)(7) of the Privacy Act of 1974 (described in paragraph (b) of this section);

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 U.S.C.;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of the National Archives and Records Administration or his/her designee to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or a subcommittee of any such joint committee;

(10) To the Comptroller General or any authorized representatives, in the course of the performance of the duties of the General Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(d) No employee shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(e) No employee shall sell or rent an individual's name and address unless such action is specifically authorized by law.

(f) An employee is subject to criminal penalties and administrative sanctions who by virtue of such employment or offical position has possession of or access to agency records which contain individually identifiable information the disclosure of which is prohibited by paragraph (a) of this section or by any other rules, regulations or directives of FEMA established under the Privacy Act of 1974, and who:

(1) Knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, or

(2) Willfully maintains a system of records without meeting the notice requirements of the Privacy Act of 1974, or

(3) Knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses.

(g) An employee subjects himself/herself to administrative sanctions, and subjects FEMA to civil penalties who:

(1) Makes a determination not to amend an individual's record in accordance with the Privacy Act of 1974; or

(2) Refuses to comply with an individual's request to gain access to review and to obtain a copy of any information pertaining to him/her; or

(3) Fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to ensure fairness in any determination relating to the qualifications, character, right or opportunities of or benefits to the individual that may be made on the basis of such record and consequently a determination is made which is adverse to the individual; or

(4) Fails to comply with any provision of the Privacy Act of 1974 or any FEMA regulation or directive implementing it (5 U.S.C. 552a(g)(4)).

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 3.40 Applicability of Subpart B.

Except as specifically provided in §§ 3.41 through 3.45, each special government employee is subject to the provisions of Subpart B as if such individual were an employee, with the following exceptions:

(a) Section 3.13 Outside employment and other outside activities;

(b) Section 3.14 Gifts and gratuities;

(c) Section 3.21 Membership in organizations.

§ 3.41 Use of Government employment.

A special Government employee shall not use FEMA employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for the individual or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.42 Use of inside information.

(a) A special Government employee shall not use information obtained as a result of FEMA employment which has not become part of the body of public information for private gain for the employee or another person either by direction on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties.

(b) Special Government employees shall not use Government employment to coerce a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.43 Coercion.

A special Government employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.44 Gifts, entertainment and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with FEMA anything of monetary value as a gift, gratuity, loan, entertainment, or favor for the employee or another person, particularly one with whom the employee has family business, or financial ties.

(b) The exceptions of § 3.14, which are applicable to employees, are also applicable to special Government employees.

§ 3.45 Applicability of other provisions.

(a) Each special Government employee shall acquaint himself/herself with each statute, Executive Order, regulation, or similar provision listed in Appendix A to this part.

(b) A special Government employee engaged on an irregular or occasional basis is bound by the political activity restrictions of the Hatch Act cited in Appendix A only while in an active duty status and for the entire 24 hours of any day during which the special Government employee is actually employed.

Subpart D—Disclosure of Financial Interests

GENERAL PROVISIONS

§ 3.50 General.

(a) Title II of the Ethics in Government Act of 1978 (Pub. L. 95-521), which became effective January 1, 1979, requires that certain officers and employees of the executive branch make specified financial disclosures in accordance with procedures for filing, review and public availability established by the Office of Personnel Management.

(b) Section 402 of Executive Order 11222 of May 8, 1965 authorizes the Office of Personnel Management to prescribe regulations requiring submission by certain officers and employees of the executive branch of statements of employment and financial interest. These are contained in Subpart D of 5 CFR Part 735.

(c) This Subpart D describes for FEMA the procedures required to implement the laws, Executive orders, and Office of Personnel Management Regulations concerning disclosure of financial and employment interests.

(d) An individual required to file a disclosure statement by virtue of the Ethics in Government Act of 1978 need not file a disclosure statement required by virtue of E.O. 11222 and Subpart D of 5 CFR Part 735.

§ 3.51 Information not required.

Subpart D of this part does not require an employee to report information relating to a connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in disclosure statements.

§ 3.52 Effect of employees' statements on other requirements.

The statements required of employees pursuant to this part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation, including this part.

§§ 3.53–3.59 [Reserved]

FINANCIAL DISCLOSURE UNDER ETHICS IN GOVERNMENT ACT OF 1978

§ 3.60 Who must file.

The following officials of FEMA, if they have served 61 or more days during the preceding calendar year:

(a) Officers and employees (including special Government employees, as defined in 18 U.S.C. 202) whose positions are classified at GS-16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the minimum rate of basic pay for GS-16. This includes all positions in the Senior Executive Service;

(b) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS-16;

(c) Employees in the excepted service in positions which are of a confidential or policy-making character unless their positions have been excluded by regulations issued by the Director of the Office of Government Ethics (see 5 CFR 735.503).

(d) The Ethics Counselor.

§ 3.61 Form used to file.

The disclosure statement which must be used is Standard Form (SF) 278, "Executive Personnel Financial Disclosure Report." Copies are available from the Ethics Counselor.

§ 3.62 When to file.

No later than May 14 annually, or 30 days after the individual assumes a position subject to the requirement in § 3.60 of this part unless the individual has within 30 days prior to assuming the position, left another position subject to the requirement. In the event of termination of employment, if the individual has not in the interim accepted another position subject to the requirement, report must be filed no later than the 30th day after termination, covering:

(a) The preceding calendar year if the annual May 14 report has not been filed, and

(b) The portion of the present calendar year up to the date of termination.

§ 3.63 How and where to file.

(a) The SF 278 shall be submitted to the Ethics Counselor (General Counsel), who shall note on the report the date it is received. The Ethics Counselor will forward the report to the Head of Unit under whom the individual serves for review.

(b) The Forms SF 278 of heads of units shall be submitted for review to the Deputy Director. The Deputy Director's Form SF 278 will be submitted to the Director for review.

§ 3.64 Supervisory review of report.

Upon receipt of an SF 278 the head of unit will consider the reported financial interests as they relate to the individual's duties, and make recommendations. The Director or head of unit then will return the form with attachments, to the Ethics Counselor for review. The review process shall be initiated within 60 days after the date of filing, and completed no later than 120 days after the date of filing.

§ 3.65 Action on report.

(a) If, after review, the Ethics Counselor or Deputy Counselor is of the opinion that the individual making the report is in compliance with applicable law and regulation, he or she shall state such opinion on the report, and sign same. If additional information is required, the involved individual shall be notified as to what this information is and as to when it must be submitted.

(b) If the Ethics Counselor or Deputy Counselor is of the opinion, on the basis of information submitted, that the individual is not in compliance with applicable laws and regulations, the individual shall be notified and the procedures specified in § 3.8 followed. Notwithstanding § 3.8, if steps for assuring compliance with applicable laws and regulations are not taken by the date set under § 3.8(c) by an individual whose appointment requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

§ 3.66 Public release.

(a) No later than 15 days after any report (including SF 278) is received by FEMA, the Ethics Counselor shall permit inspection of, or furnish a copy of, such report including the position description to any person who requests inspection or a copy. The report shall be retained for six years after receipt. No fee shall be charged for furnishing a copy unless the cost of reproduction exceeds $10 in which case the fee shall be the same as those established under the FEMA regulations implementing the Freedom of Information Act (Part 5 of this title). The Ethics Counselor shall maintain an accurate accounting of disclosures of reports in accordance with the requirements of Part 6 of this title, which relates to implementation of the Privacy

Act of 1974. These reports are part of a system of records-OPM-Govt 4 established by the Office of Personnel Management.

(b) Notwithstanding paragraph (a) of this section, a report may not be made available under this section to any person, except upon a written application by such person stating—

(1) The person's name, occupation and address;

(2) The name and address of any other person on whose behalf the inspection or copy is requested; and

(3) That such person is aware of the prohibitions on the obtaining or use of the report.

These applications shall be made available to the public throughout the period during which the report is made available to the public.

§§ 3.67–3.79 [Reserved]

FINANCIAL DISCLOSURE UNDER EXECUTIVE ORDER 11222 AND 5 CFR PART 735

§ 3.80 Who must file.

(a) Except as provided in § 3.88, the following categories of employees shall submit statements of employment and financial interest:

(1) Employees classified at or above the GS-13 level or its equivalent who are in a position identified as a position the incumbent of which is responsible for making a Government decision or taking a Government action in regard to:

(i) Contracting or procurement;

(ii) Administering or monitoring grants or subsidies;

(iii) Regulating or auditing private or other non-Federal enterprise; or

(iv) Other activities in which the decision or action has an economic impact on the interests of any non-Federal enterprise.

(2) Employees classified at or above the GS-13 level or its equivalent who are in a position which the Director has determined has duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and to carry out the purpose of law, Executive order, and this part.

(3) All special Government employees, including members of the FEMA Advisory Board.

(4) Employees classified below the GS-13 level or its equivalent who are in a position which otherwise meets the criteria in paragraph (a) or (b) of this section, and which position has been approved by the OPM as an exception that is essential to protect the integrity of the Government and to avoid employee involvement in a possible conflict-of-interest situation.

(b) The specific positions described in paragraph (a) of this section shall be identified by the Ethics Counselor in conjunction with the Office of Personnel. Designation of a position is effective upon actual notification to the incumbent, or upon inclusion of a statement in the official job description that the position is subject to the requirements of this section.

§ 3.81 Form used to file.

The disclosure statement which must be used by the employees named according to § 3.80 is FEMA Form 11-1.

§ 3.82 When to file.

An employee required to submit a FEMA Form 11-1 pursuant to § 3.80 shall submit that statement not later than:

(a) Ninety days after the effective date of this part if employed on or before that effective date; or

(b) Thirty days after entrance on duty, but not earlier than 90 days after the effective date, if appointed after that effective date. All special Government employees must submit a FEMA Form 11-1 prior to being appointed.

§ 3.83 How and where to file.

(a) The FEMA Form 11-1 shall be submitted to the Ethics Counselor (General Counsel) for review and custody.

(b) All employees and special Government employees shall file the FEMA Form 11-1 annually no later than October 31. The statement shall report financial interests or employment as of September 30 each year. Photocopies of previous reports will "no change" annotations are unacceptable. An original report must be filed annually.

(c) Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest or engaging in outside employment or other activity that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of section 208 of Title 18, United States Code, or this part.

§ 3.84 Review of report.

The FEMA Form 11-1 is reviewed by the Ethics Counselor, or Deputy Counselor, who shall obtain copies of the relevant job description as necessary. The counselors shall show the forms to supervisors, or other employees of FEMA only to the extent required to determine if a conflict of interest exists.

§ 3.85 Action on report.

When a statement submitted pursuant to this part or information from other sources indicates a conflict between the interest of an employee and the performance of the employee's services for the Government, the employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict in accordance with the procedure set out in § 3.8.

§ 3.86 Confidentiality of employees' statements.

Unlike the SF 278, each FEMA Form 11-1 shall be held in confidence by FEMA. To insure this confidentiality, the OPM regulations provide that:

(a) FEMA shall designate which officials and employees are to review and retain the statements;

(b) Officials and employees designated under paragraph (a) of this section are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part; and

(c) FEMA may not disclose information from a statement except as the OPM or the Director may determine for good cause shown.

§ 3.87 Employees' complaint on filing requirement.

Employees have the opportunity for review through the FEMA grievance procedures of a complaint by an employee that the position has been improperly included under these regulations as one requiring the submission of a statement of employment and financial interests.

§ 3.88 Employees not required to submit statements.

Employees in positions that meet the criteria in § 3.80 may be excluded from the reporting requirement when the Ethics Counselor determines that:

(a) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(b) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

§ 3.89 Information not known to employees.

If any information required to be included on a statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in the employees' behalf.

Subpart E—Post Employment Conflicts of Interest

§ 3.100 Scope.

This part contains rules governing discipline of a former officer or employee of the Federal Emergency Management Agency because of a post employment conflict of interest. Such discipline may include prohibition from practice before the agency as these terms are defined in this part.

§ 3.101 Definitions.

For the purpose of this part—

(a) The term "agency" means the Federal Emergency Management

Agency and includes the U.S. Fire Administration which has been designated as a separate statutory agency by rule of the Office of Government Ethics.

(b) The term "General Counsel" means the General Counsel of the agency.

(c) The term "practice" means any informal or formal appearance before, or, with the intent to influence, any oral or written communications to the agency on a pending matter of business on behalf of any other person (except the United States).

§ 3.102 General Counsel.

The General Counsel shall initiate and provide for the conduct of disciplinary proceedings involving former employees of the agency as authorized by 18 U.S.C. 207(j) and perform such other duties as are necessary or appropriate to carry out his/her functions under this part. The General Counsel reserves the right to issue such special orders as he/she may consider proper in any case within the purview of this part.

§ 3.103 Records.

There are made available to public inspection at the Office of General Counsel the roster of all persons prohibited from practice before the agency. Other records may be disclosed upon specific request, in accordance with appropriate disclosure regulations of the agency.

§ 3.104 Interpretative standards.

A determination that a former officer or employee of the agency violated 18 U.S.C. 207 (a), (b), or (c) will be made in conformance with the standards established in the interpretative regulations promulgated by the Office of Personnel Management, 5 CFR Part 737.

§ 3.105 Authority to prohibit appearances.

Pursuant to 18 U.S.C. 207(j), if the General Counsel finds, after notice and opportunity for a hearing, that a former officer or employee of the agency violated 18 U.S.C. 207 (a), (b), or (c), the General Counsel in his/her discretion may prohibit that individual from engaging in practice before the agency for a period not to exceed five years, or may take other appropriate disciplinary action.

§ 3.106 Receipt of information concerning former employees.

(a) If an officer or employee of the Agency has reason to believe that a former officer or employee of the Agency has violated any provision of this part, or if any such officer or employee received information to that effect, he/she shall promptly make a written report thereof, which report or a copy thereof shall be forwarded to the Inspector General, Federal Emergency Management Agency. If any person has information of such violation, he/she may make a written report thereof, which report or a copy thereof shall be forwarded to the Inspector General, Federal Emergency Management Agency. If any person has information of such violations, he/she may make a report thereof to the Inspector General or to any officer or employee of the Agency. The Inspector General shall refer any information he/she deems warranted to the General Counsel.

(b) The General Counsel shall coordinate proceedings under this part with the Office of Government Ethics and with the Department of Justice in cases where the agency is in receipt of information regarding a possible violation of 18 U.S.C. 207 or in cases where the Department of Justice initiates criminal prosecution.

[50 FR 38985, Sept. 26, 1985; 50 FR 42023, Oct. 17, 1985]

§ 3.107 Conferences.

(a) *In general.* The General Counsel may confer with a former officer or employee concerning allegations of misconduct irrespective of whether an administrative disciplinary proceeding has been instituted against him/her. If such conference results in a stipulation in connection with a proceeding in which such person is the respondent, the stipulation may be entered in the record at the instance of either party to the proceeding.

(b) *Voluntary suspension.* A former officer or employee, in order to avoid the institution or conclusion of a proceeding, may offer his/her consent to suspension from practice before the Agency. The General Counsel in his/her discretion, may suspend a former officer or employee in accordance with the consent offered.

§ 3.108 Institution of proceeding.

Whenever the General Counsel has reason to believe that any former officer or employee of the Agency has violated 18 U.S.C. 207 (a), (b) or (c), he/she may reprimand such person or institute an administrative disciplinary proceeding for that person's suspension from practice before the Agency. The proceeding shall be instituted by a complaint which names the respondent and it signed by the General Counsel and filed in his/her office. Except in cases of willfulness, or where time, the nature of the proceeding, or the public interest does not permit, a reprimand will not be given nor will a proceeding be instituted under this section until facts or conduct which may warrant such action have been called to the attention of the proposed respondent in writing and he/she has been accorded the opportunity to provide his/her position on the matter.

§ 3.109 Contents of complaint.

(a) *Charges.* A complaint shall give a plain and concise description of the allegations which constitute the basis for the proceeding. A complaint shall be deemed sufficient if it fairly informs the respondent of the charges against him/her so that the respondent is able to prepare a defense.

(b) *Demand for answer.* In the complaint, or in a separate paper attached to the complaint, notification shall be given of the place and time within which the respondent shall file his/her answer, which time shall not be less than 15 days from the date of service of the complaint, and notice shall be given that a decision by default may be rendered against the respondent in the event he/she fails to file an answer as required.

§ 3.110 Service of complaint and other papers.

(a) *Complaint.* The complaint or a copy thereof may be served upon the respondent by certified mail, or first-class mail as hereinafter provided; by delivering it to the respondent or his/her attorney or agent of record either in person or by leaving it at the office or place of business of the respondent, attorney or agent; or in any other manner which has been agreed to by the respondent. Where the service is by certified mail, the return post office receipt duly signed by or on behalf of the respondent shall be proof of service. If the certified mail is not claimed or accepted by the respondent and is returned undelivered, complete service may be made upon the respondent by mailing the complaint to him/her by first-class mail, addressed to him/her at the last address known to the General Counsel. If service is made upon the respondent or his/her attorney or agent of record in person or by leaving the complaint at the office or place of business of the respondent, attorney or agent, the verified return by the person making service, setting forth the manner of service, shall be proof of service.

(b) *Service of papers other than complaint.* Any paper other than the complaint may be served upon a respondent as provided in paragraph (a) of this section or by mailing the paper by first-class mail to the respondent at the last address known to the General Counsel, or by mailing the paper by first-class mail to the respondent's attorney or agent of record. Such mailing shall constitute complete service. Notices may be served upon the respondent or his/her attorney or agent of record by telegraph.

(c) *Filing of papers.* Whenever the filing of a paper is required or permitted in connection with a proceeding, and the place of filing is not specified by this subpart or by rule or order of the Administrative Law Judge, the paper shall be filed with the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472. All papers shall be filed in duplicate.

§ 3.111 Answer.

(a) *Filing.* The respondent's answer shall be filed in writing within the time specified in the complaint or notice of institution of the proceeding, unless on application the time is extended by the General Counsel or the Administrative Law Judge. The answer shall be filed in duplicate with the General Counsel.

(b) *Contents.* The answer shall contain a statement of facts which constitutes the grounds of defense, and it shall specifically admit or deny each allegation set forth in the complaint, except that the respondent shall not deny a material allegation in the complaint which he/she is without sufficient information to form a belief when in fact he/she possesses such information. The respondent may also state affirmatively special matters of defense.

(c) *Failure to deny or answer allegations in the complaint.* Every allegation in the complaint which is not denied in the answer shall be deemed to be admitted and may be considered as provided, and no further evidence in respect of such allegation need be adduced at a hearing. Failure to file an answer within the time prescribed in the notice to the respondent, except as the time for answer is extended by the General Counsel or the Administrative Law Judge, shall constitute an admission of the allegations of the complaint and a waiver of hearing, and the Administrative Law Judge may make his/her decision by default without a hearing or further procedure.

§ 3.112 Reply to answer.

No reply to the respondent's answer shall be required, and new matter in the answer shall be deened to be denied, but the General Counsel may file a reply in his/her discretion or at the request of the Administrative Law Judge.

§ 3.113 Proof; variance; amendment of pleadings.

In the case of a variance between the allegations in a pleading and the evidence adduced in support of the pleading, the Administrative Law Judge may order or authorize amendment of the pleading to conform to the evidence: *Provided,* That the party who would otherwise be prejudiced by the amendment is given reasonable opportunity to meet the allegations of the pleading as amended; and the Administrative Law Judge shall make findings on any issue presented by the pleadings as so amended.

§ 3.114 Motions and requests.

Motions and requests may be filed with the General Counsel or with the Administrative Law Judge.

§ 3.115 Representation.

A respondent or proposed respondent may appear in person or he/she may be represented by counsel or other representative.

§ 3.116 Administrative Law Judge.

(a) *Appointment.* An Administrative Law Judge appointed as provided by 5 U.S.C. 3105 (1966), shall conduct proceedings upon complaints for the administrative disciplinary proceedings under this part.

(b) *Power of Administrative Law Judge.* Among other powers, the Administrative Law Judge shall have authority, in connection with any proceedings assigned or referred to him/her, to do the following:

(1) Administer oaths and affirmations;

(2) Make rulings upon motions and requests, which rulings may not be appealed from prior to the close of a hearing except, at the discretion of the Administrative Law Judge, in extraordinary circumstances;

(3) Determine the time and place of hearing and regulate its course and conduct;

(4) Adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of proceedings;

(5) Rule upon offers of proof, receive relevant evidence, and examine witnesses;

(6) Take or authorize the taking of depositions;

(7) Receive and consider oral or written argument on facts or law;

(8) Hold or provide for the holding of conferences for the settlement or simplification of the issues by consent of the parties;

(9) Assess the responsible party extraordinary costs attributable to the location of a hearing;

(10) Perform such acts and take such measures as are necessary or appropriate to the efficient conduct of any proceeding; and

(11) Make initial decisions.

§ 3.117 Hearings.

(a) *In general.* The Administrative Law Judge shall preside at the hearing on a complaint for the suspension of a former officer or employee from practice before the Agency. Hearings shall be stenographically recorded and transcribed and the testimony of witnesses shall be taken under oath or affirmation. Hearings will be conducted pursuant to 5 U.S.C. 556.

(b) *Public access to hearings.* Hearings will be closed unless an open hearing is requested by the respondent, except that if classified information or protected information is likely to be adduced at the hearing, it will remain closed. A request for an open hearing must be included in the answer to be considered.

(c) *Failure to appear.* If either party to the proceeding fails to appear at the hearing, after due notice thereof has been sent to the absent party, he/she shall be deemed to have waived the right to a hearing and the Administrative Law Judge may make a decision against the absent party by default.

§ 3.118 Evidence.

(a) *In general.* The rules of evidence prevailing in courts of law and equity are not controlling in hearings on complaints for the suspension of a former officer or employee from practice before the Agency. However, the Administrative Law Judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(b) *Depositions.* The deposition of any witness taken pursuant to § 3.109 may be admitted.

(c) *Proof of documents.* Official documents, records and papers of the Agency shall be admissible in evidence without the production of an officer or employee to authenticate them. Any such documents, records, and papers may be evidenced by a copy attested or identified by an officer or employee of the Agency.

(d) *Exhibits.* If any document, record, or other paper is introduced in evidence as an exhibit, the Administrative Law Judge may authorize the withdrawal of the exhibit subject to any conditions which he/she deems proper.

(e) *Objections.* Objections to evidence shall be in short form, stating the grounds of objection relied upon, and the record shall not include argument thereon, except as ordered by the Administrative Law Judge. Rulings on such objections shall be a part of the record. No exception to the ruling is necessary to preserve the rights of the parties.

§ 3.119 Depositions.

Depositions for use at a hearing may, with the consent of the parties in writing or the written approval of the Administrative Law Judge, be taken by either the General Counsel or the respondent or their duly authorized representatives. Depositions may be taken upon oral or written interrogatories, upon not less than 10 days' written notice to the other party before any officer duly authorized to administer an oath. Such notice shall state the names of the witnesses and the time and place where the depositions are to be taken. The requirement of 10 days' notice may be waived by the parties in writing, and depositions may then be taken from the persons and at the times and places mutually agreed to by the parties. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served upon the other party with the notice, and copies of any written cross-interrogation shall be mailed or delivered to the opposing party at least 5 days before the date of taking the depositions, unless the parties mutually agree otherwise. A party upon whose behalf a deposition is taken must file it with the Administrative Law Judge and serve one copy upon the opposing party. Expenses in the reporting of depositions shall be borne by the party at whose instance the deposition is taken.

§ 3.120 Transcript.

In cases where the hearing is stenographically reported by a Government contract reporter, copies of the transcript may be obtained from the reporter at rates not to exceed the maximum rates fixed by contract between the Government and the reporter. Where the hearing is stenographically reported by a regular employee of the Agency, a copy thereof will be supplied to the respondent either without charge or upon payment of a reasonable fee. Copies of exhibits introduced at the hearing or at the taking of depositions will be supplied to the parties upon the payment of a reasonable fee (Sec. 501, Pub. L. 82-137, 65 Stat. 290 (31 U.S.C. 483a)).

§ 3.121 Proposed findings and conclusions.

Except in cases where the respondent has failed to answer the complaint or where a party has failed to appear at the hearing, the Administrative Law Judge prior to making his/her decision, shall afford the parties a reasonable opportunity to submit proposed findings and conclusions, and supporting reasons therefor.

§ 3.122 Decision of the Administrative Law Judge.

As soon as practicable after the conclusion of a hearing and the receipt of any proposed findings and conclusions timely submitted by the parties, the Administrative Law Judge shall make the initial decision in the case. The decision shall include (a) a statement of findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record, and (b) an order of suspension from practice before the Agency or other appropriate disciplinary action, or an order of dismissal of the complaint. In any decision of the Administrative Law Judge ordering suspension from practice or other disciplinary action the respondent shall be advised that such disciplinary action shall be subject to review in an appropriate United States district court. The Administrative Law Judge shall file the decision with the Director of the Federal Emergency Management Agency and shall transmit a copy thereof to the respondent or his/her attorney of record. In the absence of an appeal to the Director, Federal Emergency Management Agency, the decision of the Administrative Law Judge shall without further proceedings become the decision of the Agency 30 days from the date of the Administrative Law Judge's decision.

§ 3.123 Appeal to the Director, Federal Emergency Management Agency.

Within 30 days from the date of the Administrative Law Judge's decision, either party may appeal to the Director, Federal Emergency Management Agency. The appeal shall be filed in duplicate and shall include exceptions to the decision of the Administrative Law Judge and supporting reasons for such exceptions. If an appeal is filed by the General Counsel, he/she shall transmit a copy thereof to the respondent. Within 30 days after receipt of an appeal or copy thereof, the other party may file a reply brief in duplicate with the Director, Federal Emergency Management Agency. If the reply is filed by the General Counsel, he/she shall transmit a copy of it to the respondent. Upon the filing of an appeal and a reply brief, if any, the General Counsel shall transmit the entire record to the Director, Federal Emergency Management Agency.

§ 3.124 Decision of the Director, Federal Emergency Management Agency.

On appeal from the initial decision of the Administrative Law Judge, the Director, Federal Emergency Management Agency will make the agency decision. In making his/her decision, the Director, Federal Emergency Management Agency will review the record or such portions thereof as may be cited by the parties to permit limiting of the issues. A copy of the Director's disciplinary action shall contain provision that such disciplinary action is subject to review in an appropriate United States district court.

§ 3.125 Notice of disciplinary action.

(a) Upon the issuance of a final order suspending a former officer or employee from practice before the Agency, the General Counsel shall give notice thereof to appropriate officers and employees of the Agency. Officers and employees of the Agency shall refuse to participate in any appearance by such former officer or employee or to accept any communication which constitutes the prohibited practice before the Agency during the period of suspension.

(b) The General Counsel shall take other appropriate disciplinary action as may be required by the final order.

APPENDIX A—STATUTES GOVERNING CONDUCT OF FEDERAL EMPLOYEES

There are numerous statutes pertaining to the ethical and other conduct of Federal employees. The important ones of general applicability are referred to in this appendix.

A. Bribery and Graft

.01 Title 18, U.S.C. 201, prohibits anyone from bribing or attemping to bribe a public official by corruptly giving, offering, or promising the official or any person selected by the official, anything of value with intent (a) to influence any official act, (b) to influence the official to commit or allow any fraud on the United States, or (c) to induce the performance or omission of any act in violation of the official's lawful duty. As used in section 201, "Public officials" is broadly defined to include officers, employees, and other persons carrying on activities for or on behalf of the Government.

.02 Section 201 also prohibits a public official's solicitation or acceptance of, or agreement to take a bribe. In addition, it forbids offers or payments to, and solicitations or receipt by, a public official of anything of value "for or because of" any official act performed or to be performed by him/her.

.03 Section 201 further prohibits the offering to or the acceptance by a witness of anything of value involving intent to influence the witness' testimony at a trial, Congressional hearing, or agency proceeding. A similar provision applies to witnesses "for or because of" testimony given or to be given. The provisions summarized in this section do not preclude lawful witness fees, travel and subsistence expenses, or reasonable compensation for expert testimony.

B. Compensation to Officers and Employees in Matters Affecting the Government

.01 Title 18 U.S.C. 203, prohibits an officer or employee from receiving compensation for services rendered for others before a Federal department or agency in matters in which the Government is a party or is interested.

.02 Section 203 applies to a special Government employee as follows:

(a) If the special Government employee has served in FEMA more than 60 days during the preceding period of 365 days, section 203 applies to him/her only in relation to a particular matter involving a specific party or parties (1) in which the employee has at any time participated personally and substantially in his/her governmental capacity, or (2) which is pending in FEMA, or

(b) If the special Government employee has served in FEMA no more than 60 days during the preceding period of 365 days, section 203 applies only in relation to a particular matter involving a specific party or parties in which the employee has at any time participated personally and substantially in his/her governmental capacity.

.03 Section 203 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

C. Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government

.01 Title 18 U.S.C. 205, prohibits an officer or employee, otherwise than in the performance of official duties from:

(a) Acting as agent or attorney for prosecuting any claim against the United States, or receiving any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claims; or

(b) Acting as agent or attorney for anyone before any Government agency, court, or officer in connection with any matter in which the United States is a party or has a direct and substantial interest.

.02 Section 205 applies to a special Government employee as follows:

(a) If the special Government employee has served in FEMA more than 60 days during the preceding period of 365 days, section 205 applies only in relation to a particular matter involving a specific party or parties (1) in which the employee has at any time participated personally and substantially in his/her governmental capacity, or (2) which is pending in FEMA.

(b) If the special Government employee has served no more than 60 days during the preceding period of 365 days, section 205 applies only in relation to a particular matter involving a specific party or parties in which the employee has at any time participated personally and substantially in his/her governmental capacity.

.03 Section 205 does not preclude:

(a) Employees, if not inconsistent with faithful performance of their duties, from acting without compensation as agents or attorneys for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings, in connection with those proceedings; or

(b) Employees from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

.04 Sections 203 and 205 do not preclude:

(a) Employees from acting as agents or attorneys for their parents, spouses, children, or any person for whom, or for any estate for which an employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which the employee has participated personally and substantially as a Government employee or which are the subject of the employee's responsibility, provided the head of the operating unit concerned approves; or

(b) A special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with, or for the benefit of the United States provided the Director or designee shall certify in writing that the national interest so requires, and such certification shall be published in the FEDERAL REGISTER.

.05 Section 205 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

D. Disqualification of Former Officers and Employees in Matters Connected With Former Duties or Official Responsibilities; Disqualification of Partners

Title 18 U.S.C. 207 deals with former employees and possible conflicts of interest.

E. Acts Affecting a Personal Financial Interest

.01 Title 18 U.S.C. 208 prohibits an officer or employee, including a special Government employee, from participating personally and substantially in a governmental capacity in any matter in which to his/her knowledge, the employee or his/her spouse, minor child, partner, organization in which he/she is serving as officer, director, trustee, partner, or employee, or any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment, has a financial interest.

F. Salary of Government Officials and Employees

.01 Title 18 U.S.C. 209, prohibits:

(a) An officer or employee from receiving any salary, or any contribution to or supplementation of salary, as compensation for services as an officer or employee of the United States from any source other than the Government of the United States, except as may be contributed out of the treasury of a State, county, or municipality, and

(b) Any person or organization from paying, contributing to, or supplementing the salary of an officer or employee under circumstances which would make its receipt a violation of paragraph .01(a) of this section.

.02 Section 209:

(a) Does not prevent a Government employee from continuing to participate in a bona fide pension or other welfare plan maintained by a former employer (*but see* 44 CFR 3.12(e)(1)(iv));

(b) Exempts special Government employees and employees serving the Government without compensation, and grants a corresponding exemption to any outside person paying compensation to such individuals; and

(c) Does not prohibit the payment or acceptance of sums under the terms of the Government Employees Training Act.

G. Code of Ethics for Government Service

"Code of Ethics for Government Service," House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12 of July 11, 1958, which reads as follows:

"Any Person in Government Service Should:

"PUT loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

"UPHOLD the Constitution, laws, and legal regulatimns of the United States and all governmelts therein and never be a party to their evasion.

"GIVE a full day's labor for a full day's pay; giving to the performance of duties earnest effort and best thought.

"SEEK to find and employ more efficient and economical ways of getting tasks accomplished.

"NEVER discriminate unfairly by the dispensing of special favors or privileees to anyone, whether for remuneration or not; and never accept for the employee's self or his/her family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

"MAKE no private promises of any kind binding upon the duties of office, since a

Government employee has no private word which can be binding on public duty.

"ENGAGE in no business with the Government either directly or indirectly, which is inconsistent with the conscientious performance of the employee's governmental duties.

"NEVER use any information coming to the employee confidentially in the performance of governmental duties as a means for making private profit.

"EXPOSE corruption wherever discovered.

"UPHOLD these principles, ever conscious that public office is a public trust."

H. Prohibitions

.01 The prohibition against lobbying with appropriated funds (18 U.S.C. 1913) reads as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designated to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation, but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than 1 year, or both; and after notice and hearing by the superior officer vested with the power of removing him/her, shall be removed from office or employment."

.02 The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918) provide that an individual may not accept or hold a position in the Government of the United States if that individual:

(a) Advocates the overthrow of our constitutional form of Government;

(b) Is a member of an organization that the individual knows advocates the overthrow of our constitutional form of government;

(c) Participates in a strike, or asserts the right to strike the Government of the United States or the government of the District of Columbia; or

(d) Is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that the individual knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

.03 The prohibitions in 2 U.S.C. 441 i, against receiving any single honorarium in excess of $2,000.

.04 The prohibitions against (a) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 788); and (b) the disclosure of confidential information (18 U.S.C. 1905). Each employee who has access to classified information, e.g. confidential, secret, or top secret, or to a restricted area is responsible for knowing and for complying strictly with the security regulations of the Federal Emergency Management Agency.

.05 The prohibition against the use of the franking privilege to avoid payment of postage on private mail (18 U.S.C. 7119).

.06 The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

.07 The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001). An employee in connection with an official matter shall not knowingly and willfully conceal or cover up a material fact or falsify official papers or documents.

.08 The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508). Falsely making, altering or forging in whole or in part, any form of transportation request is prohibited.

.09 The prohibitions against:

(a) Embezzlement of Government money or property (18 U.S.C. 641). No employee may convert any Government money or Government property to his/her own use or the use of another person.

(b) Failure to account for public money (18 U.S.C. 643). Any employee, who, having received public money which he/she is not authorized to retain, fails to render accounts for same as provided by law, is guilty of embezzlement.

(c) Embezzlement of Government money or property of another person in the possession of the employee by reason of his/her employment (18 U.S.C. 654). An employee is prohibited from embezzling or wrongfully converting for his/her own use the money or property of another which comes under his/her control as the result of his/her employment.

.10 The prohibition against unauthorized removal or use of documents relating to claims from or by the Government (18 U.S.C. 285). No employee, without authority, may remove from the place where it was kept by authority of the United States any document, record, file, or paper intended to be used to procure the payment of money from or by the United States or the allowance or payment of any claim against the United States, regardless of whether the document or paper has already been used or the claim has already been allowed or paid; and no employee may use or attempt to use any such document, record, file, or paper to procure the payment of any money from or by the United States or the allowance or payment of any claim against the United States.

.11 The prohibition against proscribed political activities, including the following, among others:

(a) Using official authority or influence for the purpose of interfering with or influencing the result of an election, except as authorized by law (5 U.S.C. 7324);

(b) Taking an active part in political management or in political campaigns, except as authorized by law (5 U.S.C. 7324);

(c) Offering or promising to pay anthing of value in consideration of the use of, or promise to use, any influence to procure any appointive office or place under the United States for any person (18 U.S.C. 210);

(d) Soliciting or receiving, either as a political contribution or for personal emolument, anything of value in consideration of a promise of support or use of influence in obtaining for any person any appointive office or place under the United States (18 U.S.C. 211);

(e) Using official authority to interfere with a Federal election (18 U.S.C. 595);

(f) Promising any employment compensation, or other benefit made possible by Act of Congress in consideration of political activity or support (18 U.S.C. 600);

(g) Action by a Federal officer or employee to solicit or receive, or to be in any manner concerned with soliciting or receiving, any contribution for any political purpose whatever from any other Federal officer or employee or from any person receiving compensation for services from money derived from the Treasury of the United States (18 U.S.C. 602);

(h) Soliciting or receiving (by any person) anything of value for any political purpose whatever on any government premises (18 U.S.C. 607);

(i) Soliciting or receiving contributions for political purposes from anyone on Federal relief or work relief (18 U.S.C. 602);

(j) Payment or a contribution for political purposes by any Federal officer or employee to another Federal officer or employee (18 U.S.C. 607);

(k) Payment of a political contribution in excess of statutory limitations and purchase of goods, commodities, advertising, or articles, the proceeds of which inure to the benefit of certain political candidates or organizations (18 U.S.C. 608).

.12 The prohibition against an employee acting as the agent of a foreign principal registered under the Federal Agents Registration Act (18 U.S.C. 219).

APPENDIX B—EXAMPLES OF CONFLICT OF INTEREST SITUATIONS

The Ethics in Government Act of 1978, as amended, requires that a list be maintained for employee use of circumstances or situations involving FEMA employees which have resulted or may result in non-compliance with the various ethics laws and regulations. What follows is such a list. The absence of any situation or circumstance from this list shall not be construed as a indication that an individual in such a circumstance or situation would be in compliance with such laws or regulations. Questions concerning specific situations should be referred to the Ethics Counselor.

Example 1: A FEMA employee with decision-making authority concerning approval of evacuation plans for areas surrounding nuclear power plants holds a large amount of stock in an electric company which is seeking such approval for its new plant. This financial holding results in a conflict of interest. (It should be noted that financial interests of an employee's spouse and dependent children are considered to be interests of the employee.) The employee must recuse himself/herself from all work on the subject approval or divest himself/herself of the holding. 44 CFR 3.6.

Example 2: A program analyst for Emergency Operations desires to take a part-time night job performing manual labor for a corporation which does not do business with the United States Government. Because this outside employment is not in the same professional field as that of the employee's official position, prior written approval of the Ethics Counselor is not required. Such employment would be permissible as long as it did not impair the employee's mental or physical capacity to perform his/her government responsibilities in an acceptable manner. 44 CFR 3.13.

Example 3: A FEMA employee desires to leave the agency and is currently seeking another job. The employee has sent a resume to Business X, a corporation which does business with FEMA. The law provides that an employee may not participate personally and substantially in any particular matter in which any person or organization with whom the employee is negotiating or has any arrangement concerning prospective employment has a financial interest. The term "negotiating" has been interpreted broadly enough to encompass this example. Therefore, this employee must recuse himself/herself for any work involving Business X and must advise his/her supervisor of the fact of such negotiation with Business X. 18 U.S.C. 208.

Example 4: A FEMA regional employee desires to run for the Board of Education in his/her county. The Hatch Act, which governs the political activities of Federal employees, provides that such employees may not take an active part in any political campaign. They may, however, take part in nonpartisan activities. Therefore, the employee may participate in the election *only* if none of the candidates is nominated as representing a particular party. 5 U.S.C. 7321–28; 5 CFR Part 733.

Example 5: An NETC employee requests an opinion on the propriety of engaging in outside employment consisting of the sale and marketing of outdoor warning devices/sirens. FEMA provides grants to state and local governments for the acquisition of civil defense sirens. Therefore, an actual or apparent conflict of interest could be created by the employee's sale and marketing of the sirens. Without further information as to the types of sirens he/she wishes to sell and to whom they will be marketed and sold, approval to engage in this activity cannot be granted. Furthermore, such activity also would require supervisory certification of no conflict before the Ethics Counselor would approve it. 44 CFR 3.13.

Example 6: The employee in Example 5 returned with the following information: He/she would not be selling or marketing sirens to any buyer which is the recipient of a FEMA or Federal grant for the acquisition of civil defense sirens; a memorandum from his/her supervisor stating that no conflict of interest would exist if the employee sold the sirens. Under these circumstances, the outside activity would be approved. If any time during normal FEMA work hours is required in the performance of this outside activity, the employee must take annual leave.

Example 7: An employee left FEMA six months ago and is now employed with a private corporation. While at FEMA, the individual had pending under his/her responsibility development of a proposal for the acquisition of a special computer system. The private corporation desires to seek the contract for this system using the former FEMA employee as the contractor representative. Under applicable law, however, the individual may not serve in this capacity. All former Government employees are prohibited for two years after leaving the Government from representing any other person in any appearance before or, with intent to influence, communicating with the United States in connection with any particular matter, involving a specific party, which was pending under the employee's official responsibility within a period of one year prior to the termination of that responsibility. They are prohibited *forever* from acting in such a representational capacity in connection with any particular Government matter involving a specific party in which matter the employee participated personally and substantially as a Government employee. (*Note:* Separate rules apply to SES and presidential appointees.) The employee could work behind the scenes on the bid or proposal, but his/her name could not appear on the proposal in any manner prohibited above. 18 U.S.C. 209; 5 CFR Part 737.

Example 8: A FEMA contract officer had a lengthy meeting downtown with the representatives of a FEMA contractor. Their discussions were not completed by lunchtime, so the contractors asked the FEMA employee to join them at a nearby inexpensive restaurant to continue. The contractors want to pick up the check. However, the FEMA employee may not accept this offer and must pay for his/her own meal. The exception to the prohibition on gift acceptance applies to food and refreshment of nominal value on infrequent occasions in the ordinary course of a business meeting. This is generally interpreted to mean a meeting on the premises of the contractor and not at a restaurant. 44 CFR 3.14.

Example 9: A FEMA employee's job requires frequent travel. The employee belongs to a frequent flier club in which bonus points are accumulated for each trip which may be used for subsequent free trips or upgrades. The employee has accumulated enough points for a free trip to the Bahamas where he/she would like to go on vacation. And, on the mmst recent official trip, the employee volunteered to vacate his/her seat and received $200.00 from the airline, he/she plans to spend in Nassau. The law is clear that employees may not use points accumulated from official travel for personal travel. These points may be used only for free official travel and to upgrade the class of an official flight. Nor may an employee personally accept gifts received in connection with official travel, i.e., free teddy bear for renting with Car Rental Company X. Rather, such items must be accepted on behalf of the U.S. Government and turned over to the FEMA Office of the Comptroller. As for the funds received for voluntarily vacating his/her seat, the employee may keep the money. If this action results in a delay in the employee's return to work, that delay must be charged as annual leave. Nor will additional per diem be allowed for expenses incurred incident to the delay. Finally, if an employee is *involuntarily* "bumped" from a flight, any reimbursement received may not be kept and must be turned over to the Comptroller's Office. 41 CFR Part 101–25; *Matter of Armer,* 59 Comp. Gen. 203 (1980); *Matter of Currier,* 59 Comp. Gen. 95 (1979).

Example 10: An accountant at FEMA desires to make some extra money by preparing tax returns for private individuals outside of FEMA. Before doing so, he/she must obtain the written approval of the Ethics Counselor. Additionally, if the outside employment were approved, the employee would be prohibited from representing the individual taxpayers before the Internal Revenue Service if any questions arose concerning their returns. It would be recommended that the employee advise all clients of the restrictions in the services that he/she could provide. 44 CFR 3.13.

PART 4—INTERGOVERNMENTAL REVIEW OF FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) PROGRAMS AND ACTIVITIES

Sec.

4.1 What is the purpose of these regulations?
4.2 What definitions apply to these regulations?
4.3 What programs and activities of FEMA are subject to these regulations?
4.4 [Reserved]
4.5 What is the Director's obligation with respect to Federal interagency coordination?
4.6 What procedures apply to the selection of programs and activities under these regulations?
4.7 How does the Director communicate with State and local officials concerning FEMA's programs and activities?
4.8 How does the Director provide an opportunity to comment on proposed Federal financial assistance and direct Federal development?
4.9 How does the Director receive and respond to comments?
4.10 How does the Director make efforts to accommodate intergovernmental concerns?
4.11 What are the Director's obligations in interstate situations?
4.12 How may a State simplify, consolidate, or substitute federally required State plans?
4.13 May the Director waive any provision of these regulations?

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); sec. 401, Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204, Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

SOURCE: 48 FR 29316, June 24, 1983, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 47 FR 57369, Dec. 23, 1982, 48 FR 17101, Apr. 21, 1983, and 48 FR 29096, June 24, 1983.

§ 4.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of FEMA, and are not intended to create any right or benefit enforceable at law by a party against FEMA or its officers.

§ 4.2 What definitions apply to these regulations?

"FEMA" means the Federal Emergency Management Agency.

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

"Director" means the Director of FEMA or an official or employee of FEMA acting for the Director under a delegation of authority.

"State" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 4.3 What programs and activities of FEMA are subject to these regulations?

The Director publishes in the FEDERAL REGISTER a list of FEMA's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

§ 4.4 [Reserved]

§ 4.5 What is the Director's obligation with respect to Federal interagency coordination?

The Director, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and FEMA regarding programs and activities covered under these regulations.

§ 4.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 4.3 of this part for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the Director of FEMA's programs and activities selected for that process.

(c) A State may notify the Director of changes in its selections at any time. For each change, the State shall submit to the Director an assurance that the State has consulted with local elected officials regarding the change. FEMA may establish deadlines by which States are required to inform the Director of changes in their program selections.

(d) The Director uses a State's process as soon as feasible, depending on individual programs and activities, after the Director is notified of its selections.

§ 4.7 How does the Director communicate with State and local officials concerning FEMA's programs and activities?

(a) For those programs and activities covered by a state process under § 4.6, the Director, to the extent permitted by law:

(1) Uses the state process to determine views of State and local elected officials; and,

(2) Communicates with State and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Director provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the State process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which FEMA in its discretion deems appropriate.

§ 4.8 How does the Director provide an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Director gives state processes or directly affected State, areawide, regional and local officials and entities at least 60 days from the date established by the Director to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with FEMA have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

§ 4.9 How does the Director receive and respond to comments?

(a) The Director follows the procedures in § 4.10 if:

(1) A State office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 4.6.

(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a state process recommendation, State, areawide, regional and local officials and entities may submit comments to FEMA.

(d) If a program or activity is not selected for a state process, State, areawide, regional and local officials and entities may submit comments to FEMA. In addition, if a state process recommendation for a nonselected program or activity is transmitted to FEMA by the single point of contact, the Director follows the procedures of § 4.10 of this part.

(e) The Director considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Director is not required to apply the procedures of § 4.10 of this part, when such comments are provided by a single point of contact, by the applicant or directly to FEMA by a commenting party.

§ 4.10 How does the Director make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to FEMA through its single point of contact, the Director either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Director in his or her discretion deems appropriate. The Director may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Director informs the single point of contact that:

(1) FEMA will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Director has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 4.11 What are the Director's obligations in interstate situations?

(a) The Director is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select FEMA's program or activity;

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the Order or do not select FEMA's progam or activity;

(4) Responding pursuant to § 4.10 of this part if the Director receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with FEMA have been delegated.

(b) The Director uses the procedures in § 4.10 if a state process provides a state process recommendation to FEMA through a single point of contact.

§ 4.12 How may a State simplify, consolidate, or substitute federally required State plans?

(a) As used in this section:

(1) "Simplify" means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.

(2) "Consolidate" means that a State may meet statutory and regulatory requirements by combining two or more

plans into one document and that the State can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Director.

(c) The Director reviews each state plan that a State has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

§ 4.13 May the Director waive any provision of these regulations?

In an emergency, the Director may waive any provision of these regulations.

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

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AUTHORITY: 5 U.S.C. 552 as amended by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570); Reorganization Plan No. 3 of 1978; E.O. 12127; and E.O. 12600.

SOURCE: 44 FR 50287, Aug. 27, 1979, unless otherwise noted.

Subpart A—General Provisions

§ 5.1 Scope and purposes of part.

This part sets forth policies and procedures concerning the availability of and disclosure of records and information held by the Federal Emergency Management Agency (FEMA) in accordance with 5 U.S.C. 552, popularly known as the "Freedom of Information Act," (FOIA).

§ 5.2 Application.

This part applies to all records and information materials generated, developed, or held by FEMA at Headquarters, in Regions, or in the field, or any component thereof.

§ 5.3 Definitions.

For purposes of this part, the following terms have the meanings ascribed to them in this section:

(a) *Records.* "Records" means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics made or received by FEMA in pursuance of Federal Law or in connection with the transaction of public business and preserved, or appropriate for preservation, as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of FEMA or because of the information value of data contained therein. The term does not include:

(1) Material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents; or

(2) Objects or articles, such as structures, furniture, paintings, sculpture, models, vehicles or equipment; or

(3) Formulae, designs, drawings, research data, computer programs, technical data packages, and the like, which are not considered "records" within the Congressional intent of reference because of development costs, utilization, or value. These items are considered exploitable resources to be utilized in the best interest of *all* the public and are not preserved for informational value nor as evidence of agency functions. Requests for copies of such material shall be evaluated in accordance with policies expressly directed to the appropriate dissemination or use of these resources. Requests to inspect this material to determine its content for informational purposes shall normally be granted, unless inspection is inconsistent with the obligation to protect the property value of the material, as, for example, may be true for patent information and certain formulae, or is inconsistent with another significant and legitimate governmental purpose.

(b) *Reasonably Described.* "Reasonably described," when applied to a request record, means identifying it to the extent that it will permit the location of the particular document with a reasonable effort.

(c) *Agency.* "Agency," as defined in section 552(e) of Title 5 U.S.C., includes any executive department, military department, government corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(d) *Headquarters FOIA Officer.* The FOIA/Privacy Act Specialist or his/her designee.

(e) *Regional FOIA Officer.* The Regional Director, or his/her designee.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1421, Jan. 7, 1980; 51 FR 34604, Sept. 30, 1986]

§ 5.4 Availability of records.

(a) FEMA records are available to the greatest extent possible in keeping with the spirit and intent of FOIA and will be furnished promptly to any member of the public upon request addressed to the office designated in § 5.26. The person making the request need not have a particular interest in the subject matter, nor must he provide justification for the request.

(b) The requirement of 5 U.S.C. 552 that records be available to the public refers only to records in being at the time the request for them is made. FOIA imposes no obligation to compile a record in response to a request.

§ 5.5 Exemptions.

Requests for FEMA records may be denied if disclosure is exempted under the provisions of 5 U.S.C. 552, as outlined in Subpart E. Usually, except when a record is classified, or when disclosure would violate any other Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. The authority for nondisclosure will not be invoked unless there is compelling reason to do so.

§ 5.6 Congressional information.

Nothing in this part authorizes withholding information from the Congress except when executive privilege is invoked by the President.

§ 5.7 Records of other agencies.

If a request is submitted to FEMA to make available current records which are the primary responsibility of another agency, FEMA will refer the request to the agency concerned for appropriate action. FEMA will advise the requester that the request has been forwarded to the responsible agency.

§ 5.8 Records involved in litigation or other judicial process.

Where there is reason to believe that any records requested may be involved in litigation or other judicial process in which the United States is a party, including discovery procedures pursuant to the Federal Rules of Civil Procedure or Federal Rules of Criminal Procedure, the request shall be referred to the General Counsel.

§ 5.9 Inconsistent issuances of FEMA and its predecessor agencies superseded.

Policies and procedures of any of FEMA's predecessor agencies inconsistent with this regulation are superseded to the extent of that inconsistency.

Subpart B—Publication of or Availability of General Agency Information, Rules, Orders, Policies, and Similar Material

§ 5.20 Publication of rules and general policies.

In accordance with 5 U.S.C. 552(a)(1), there are separately stated and currently published, or from time to time there will be published, in the FEDERAL REGISTER for the guidance of the public, the following general information concerning FEMA:

(a) Description of the organization of the Headquarters Office and regional and other offices and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions.

(b) Statement of the general course and method by which FEMA functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by FEMA.

(e) Each amendment, revision, or repeal of the materials described in this section. Much of this information will also be codified in this Subchapter A.

§ 5.21 Effect of failure to publish.

5 U.S.C. 552(a)(1) provides that, except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or to be adversely affected by, a matter required to be published in the FEDERAL REGISTER and not so published.

§ 5.22 Coordination of publication.

The General Counsel, FEMA, is responsible for coordination of FEMA materials required to be published in the FEDERAL REGISTER.

§ 5.23 Incorporation by reference.

When deemed appropriate, matter covered by this Subpart, which is reasonably available to the class of persons affected thereby may be incorporated by reference in the FEDERAL REGISTER in accordance with standards prescribed from time to time by the Director of the Federal Register (see 1 CFR Part 51).

§ 5.24 Availability of opinions, orders, policies, interpretations, manuals, and instructions.

FEMA will make available for public inspection and copying the material described in 5 U.S.C. 552(a)(2) as enumerated in § 5.25 and an index of those materials as described in § 5.28, at convenient places and times.

§ 5.25 Available materials.

FEMA materials which are available under this Subpart are as follows:

(a) Final opinions and orders made in the adjudication of cases.

(b) Those statements of policy and interpretations which have been adopted by FEMA and are not published in the FEDERAL REGISTER.

(c) Administrative staff manuals and instructions to staff that affect a member of the public, unless such materials are promptly published and copies offered for sale.

§ 5.26 Rules for public inspection and copying.

(a) *Location.* Materials are available for public inspection and copying at the following locations:

(1) Headquarters:

Federal Center Plaza, 500 C Street, SW, Washington, DC 20472

(2) *Regional Offices*

Region I, Room 442, J. W. McCormack Post Office & Court House, Boston, MA 02109;
Region II, 26 Federal Plaza, New York, NY 10278;
Region III, Liberty Square Bldg. (Second Floor), 105 South Seventh Street, Philadephia, PA 19106;
Region IV, 1371 Peachtree Street, N.E., 7th Floor, Atlanta, GA 30309;
Region V, 300 South Wacker Drive, 24th Floor, Chicago, IL 60606;
Region VI, Federal Regional Center, Denton, TX 76201;
Region VII, 911 Walnut Street, Room 300, Kansas City, MO 64106;
Region VIII, Denver Federal Center, Bldg. 710, Denver, CO 80225-0267;
Region XI, Building 105, Presidio of San Francisco, CA 94129;
Region X, Federal Regional Center, 130-228th Street, S.W., Bothell, WA 98021-9796.

(b) *Time.* Materials will be made available for public inspection and copying during the normal hours of business.

(c) FEMA will furnish reasonable copying services at fees specified in Subpart C. Such reproduction services as are required will be arranged by the Office of Administrative Support in the headquarters or by regional offices as appropriate.

(d) *Handling of Materials.* The unlawful removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. FEMA personnel making materials available will ensure that all materials provided for inspection and copying are returned in the same condition as provided.

[44 FR 50287, Aug. 27, 1979, as amended at 47 FR 13149, Mar. 29, 1982; 48 FR 44542, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985]

§ 5.27 Deletion of identifying details.

To the extent required to prevent a clearly unwarranted invasion of personal privacy, FEMA may delete identifying details when making available or publishing an opinion, statement of policy, interpretation, or staff manual or instruction. However, the justification for each deletion will be explained fully in writing, and will require the concurrence of the General Counsel. A copy of the justification will be attached to the material containing the deletion and a copy will also be furnished to the Headquarters FOIA Officer or appropriate Regional Director.

§ 5.28 Indexes.

FEMA will maintain and make available for public inspection and copying current indexes arranged by subject matter providing identifying information for the public regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 5.25. FEMA will publish quarterly and make available copies of each index or supplements thereto. The indexes will be maintained for public inspection at the location described in § 5.26.

§ 5.29 Effect of failure to make information materials available.

Materials requested to be made available pursuant to § 5.24 that affect a member of the public may be relied upon, used, or cited as precedent by FEMA against any private party only if (a) they have been indexed and either made available or published as required by 5 U.S.C. 552(a)(2), or (b) the private party has actual and timely notice of their terms.

Subpart C—Fees

§ 5.40 Copies of FEMA records available at a fee.

One copy of FEMA records not available free of charge will be provided at a fee as provided in § 5.46. A reasonable number of additional copies will be provided for the applicable fee where reproduction services are not readily obtainable from private commercial sources.

§ 5.41 FEMA publications.

Anyone may obtain FEMA publications without charge from the FEMA Headquarters, Regional Offices and from FEMA, P.O. Box 8181, Washington, DC 20024 in accordance with standard operating procedures, including limitation on numbers of specific individual publications. FEMA Films may be obtained on loan or certain of these films may be purchased, in which case fees will be charged as set out in a FEMA catalogue. Non-exempt FEMA research reports are available from the National Technical Information Service, United States Department of Commerce, which establishes its own fee schedule. Charges, if any, for these items and similar user charges are established in accordance with other provisions of law as, for example, 31 U.S.C. 9701 and are not deemed search and duplication charges hereunder.

[44 FR 50287, Aug. 27, 1979, as amended at 48 FR 44542, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985]

§ 5.42 Fees to be charged—categories of requesters.

(a) There are four categories of FOIA requesters: Commercial use requesters; representatives of news media; educational and noncommercial scientific institutions; and all other requesters. The time limits for processing requests shall only begin upon receipt of a proper request which reasonably identifies records being sought. The Freedom of Information Reform Act of 1986 prescribes specific levels of fees for each of these categories:

(1) When records are being requested for commercial use, the fee policy of FEMA is to levy full allowable direct cost of searching for, reviewing for release, and duplicating the records sought. Commercial users are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The full allowable direct cost of searching for and reviewing records will be charged even if there is ultimately no disclosure of records. Commercial use is defined as a use that furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made. In determining whether a requester falls within the commercial use category, FEMA will look to the use to which a requester will put the documents requested. Where a requester does not explain his/her use, or where his/her explanation is insufficient to permit a determination of the nature of the use, FEMA shall require the requester to provide information regarding the use to be made of the information and if the request does not include an agreement to pay all appropriate fees, FEMA will process such request only up to the $30.00 threshold which is the estimated cost to FEMA to collect fees which we are prohibited from charging by law. Requesters must reasonably describe the records sought.

(2) When records are being requested by representatives of the news media, the fee policy of FEMA is to levy reproduction charges only, excluding charges for the first 100 pages. Representatives of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those in-

stances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (i.e., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. For example, a publication contract would be the clearest proof, but FEMA may also look to the past publication record, press accreditation, guild membership, business registration, Federal Communications Commission licensing, or similar credentials of a requester in making this determination. To be eligible for inclusion in this category, requesters must meet the criteria specified in this section and his or her request must not be made for a commercial use basis as that term is defined under paragraph (a)(1) of this section. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(3) When records are being requested by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, the fee policy of FEMA is to levy reproduction charges only, excluding charges for the first 100 pages. Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research. Noncommercial scientific institution refers to an institution that is not operated on a commercial basis as that term is defined under paragraph (a)(1) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research. Requesters must reasonably describe the records sought.

(4) For any other request which does not meet the criteria contained in paragraphs (a)(1) through (3) of this section, the fee policy of FEMA is to levy full reasonable direct cost of searching for and duplicating the records sought, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. The first two hours of computer search time is based on the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the computer search, including the operator time and the cost of operating the computer to process the request, equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, FEMA shall begin assessing charges for computer search. Requests from individuals requesting records about themselves filed in FEMA's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

(b) Except for requests that are for a commercial use, FEMA may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When FEMA believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, FEMA may aggregate any such requests and charge accordingly. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, FEMA must have a solid basis for determining that aggregation is warranted in such cases. Before aggregating requests from more than one requester, FEMA must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may FEMA aggregate multiple requests on unrelated subjects from one requester.

(c) In accordance with the prohibition of section (4)(A)(iv) of the Freedom of Information Act, as amended, FEMA shall not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself.

(1) For commercial use requesters, if the direct cost of searching for, reviewing for release, and duplicating the records sought would not exceed $30.00, FEMA shall not charge the requester any costs.

(2) For requests from representatives of news media or educational and noncommercial scientific institutions, excluding the first 100 pages which are provided at no charge, if the duplication cost would not exceed $30.00, FEMA shall not charge the requester any costs.

(3) For all other requests not falling within the category of commercial use requests, representatives of news media, or educational and noncommercial scientific institutions, if the direct cost of searching for and duplicating the records sought, excluding the first two hours of search time and first 100 pages which are free of charge, would not exceed $30.00, FEMA shall not charge the requester any costs.

[52 FR 13677, Apr. 24, 1987]

§ 5.43 Waiver or reduction of fees.

(a) FEMA may waive all fees or levy a reduced fee when disclosure of the information requested is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Federal Government and is not primarily in the commercial interest of the requester.

(b) A fee waiver request shall indicate how the information will be used, to whom it will be provided, whether the requester intends to use the information for resale at a fee above actual cost, any personal or commercial benefits that the requester reasonably expects to receive by the disclosure, provide justification to support how release would benefit the general public, the requester's and/or intended user's identity and qualifications, expertise in the subject area and ability and intention to disseminate the information to the public.

[52 FR 13678, Apr. 24, 1987]

§ 5.44 Prepayment of fees.

(a) When FEMA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, FEMA may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), FEMA may require the requester to pay the full amount owed plus any applicable interest as provided in § 5.46(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When FEMA acts under paragraphs (a) or (b) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after FEMA has received fee payments described under paragraphs (a) or (b) of this section.

[52 FR 13678, Apr. 24, 1987]

§ 5.45 Form of payment.

Payment shall be by check or money order payable to the Federal Emergency Management Agency and shall be addressed to the official designated by FEMA in correspondence with the requestor or to the Headquarters FOIA Officer or Regional FOIA Officer, as appropriate.

[44 FR 50287, Aug. 27, 1979, as amended at 48 FR 44542, Sept. 29, 1983]

§ 5.46 Fee schedule.

(a) *Manual searches for records.* FEMA will charge at the salary rate(s), (i.e., basic hourly pay rate plus 16 percent) of the employee(s) conducting the search. FEMA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

(b) *Computer searches for records.* FEMA will charge the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

(c) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charge will be $.15 per page.

(2) The fee for reproducing copies of records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through government or commercial sources. If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For copies prepared by computer, such as tapes or printouts, FEMA shall charge the actual cost, including operator time, of production of the tape or printout. If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(4) For other methods of reproduction or duplication, FEMA shall charge the actual direct costs of producing the document(s). If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(d) Interest may be charged to those requesters who fail to pay fees charged. FEMA may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(e) FEMA shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. FEMA may choose to contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When documents responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as but not limited to the Government Printing Office or the National Technical Information Service, FEMA will inform requesters of the steps necessary to obtain records from those sources.

[52 FR 13678, Apr.24, 1987, as amended at 52 FR 33410, Sept. 3, 1987]

§ 5.47 Appeals regarding fees.

A requestor whose application for a fee waiver or a fee reduction is denied may appeal that decision to the Deputy Director in the manner prescribed in Subpart D.

Subpart D—Described Records

§ 5.50 General.

(a) Except for records made available pursuant to Subpart B, FEMA shall promptly make records available to a requestor pursuant to a request which reasonably described such records unless FEMA invokes an exemption pursuant to Subpart E. Although the burden of reasonable description of the records rests with the requestor, FEMA will assist in identification to the extent practicable. Where requested records may be involved in litigation or other judicial proceedings in which the United States is a party, the procedures set forth under § 5.8 shall be followed.

(b) Upon receipt of a request which does not reasonably describe the records requested, FEMA may contact the requestor to seek a more specific description. The 10-day time limit set forth in § 5.52 will not start until a request reasonably describing the records is received in the office of the appropriate official identified in § 5.51.

§ 5.51 Submission of requests for described records.

(a) For records located in the FEMA Headquarters, requests shall be submitted in writing, to the Headquarters FOIA Officer, Federal Emergency Management Agency, Washington, DC 20472. For records located in the FEMA Regional Offices, requests shall be submitted to the appropriate Regional FOIA Officer, at the address listed in § 5.26. Requests should bear the legend "Freedom of Information Request" prominently marked on both the face of the request letter and the envelope. The 10-day time limit for agency determinations set forth in § 5.52 shall not start until a request is received in the office of the appropriate official identified in this paragraph.

(b) The Headquarters FOIA Officer shall respond to questions concerning the proper office to which Freedom of Information requests should be addressed.

§ 5.52 Review of requests.

(a) Upon receipt of a request for information, the Headquarters FOIA Officer, or the Regional FOIA Officer for a regional office, will forward the request to the FEMA office which has custody of the record.

(b) Upon any request for records made pursuant to § 5.20, § 5.24, or § 5.51, the office having custody of the records shall determine within 10 workdays, after receipt of any such request in the office of the appropriate official identified in § 5.51 whether to comply with the request. If the request is approved, the office having custody of the record shall notify the requestor and the Headquarters FOIA Officer whether request originated in Headquarters, Region or field.

[44 FR 50287, Aug. 27, 1979, as amended at 50 FR 40006, Oct. 1, 1985; 53 FR 2740, Feb. 1, 1988]

§ 5.53 Approval of request.

When a request is approved, records will be made available promptly in accordance with the terms of the regulation. Copies may be furnished or the records may be inspected and copied as provided in § 5.26.

§ 5.54 Denial of request of records.

(a) Each of the following officials within FEMA, any official designated to act for the official, or any official redelegated authority by such officials shall have the authority to make initial denials of requests for disclosure of records in his or her custody, and shall, in accordance with 5 U.S.C. 552(a)(6)(C) be the responsible official for denial of records under this part.

(1) Deputy Director
(2) [Reserved]
(3) Federal Insurance Administrator
(4) Associate Directors
(5) United States Fire Administrator

(6) Chief of Staff
(7) Office Directors
(8) General Counsel
(9) Inspector General
(10) Comptroller
(11) Regional Directors

(b) If a request is denied, the appropriate official listed in paragraph (a) of this section shall except as provided in § 5.56 advise the requestor within 10 workdays of receipt of the request by the official specified in § 5.51 and furnish written reasons for the denial. The denial will (1) describe the record or records requested, (2) state the reasons for nondisclosure pursuant to Subpart E, (3) state the name and title or position of the official responsible for the denial of such request, and (4) state the requestor's appeal rights.

(c) In the event FEMA cannot locate requested records the appropriate official specified in paragraph (a) of this section will inform the requestor (1) that the agency has determined at the present time to deny the request because the records have not yet been found or examined, but (2) that the agency will review the request within a specified number of days, when the search or examination is expected to be complete. The denial letter, will state the name and title or position of the official responsible for the denial of such request. In such event, the requestor may file an agency appeal immediately, pursuant to § 5.55.

[44 FR 50287, Aug. 27, 1979, as amended at 48 FR 44542, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985; 51 FR 34604, Sept. 30, 1986]

§ 5.55 Appeal within FEMA of denial of request.

(a) A requestor denied access, in whole or in part, to FEMA records may appeal that decision within FEMA. All appeals should be addressed to the Headquarters FOIA Officer, Federal Emergency Management Agency, Washington, DC, 20472 regardless of whether the denial being appealed was made at Headquarters, in a field office, or by a Regional Director.

(b) An appeal must be received in the Headquarters FOIA Office no later than thirty calendar days after receipt by the requestor of the initial denial.

(c) An appeal must be in writing and should contain a brief statement of the reasons why the records should be released and enclose copies of the initial request and denial. The appeal letter should bear the legend, "FREEDOM OF INFORMATION APPEAL," conspicuously marked on both the face of the appeal letter and on the envelope. FEMA has twenty workdays after the receipt of an appeal to make a determination with respect to such appeal. The twenty day time limit shall not begin to run until the appeal is received by the Headquarters FOIA Officer. Misdirected appeals should be promptly forwarded to that office.

(d) The Headquarters FOIA Officer will submit the appeal to the Deputy Director for final administrative determination.

(e) The Deputy Director shall be the deciding official on all appeals except in those cases in which the initial denial was made by him/her. If the Deputy Director made the initial denial, the Director will be the deciding official on any appeal from that denial. In the absence of the Deputy Director, or in case of a vacancy in that office, the Director may designate another FEMA official to perform the Deputy's functions.

(f) If an appeal is filed in response to a tentative denial pending locating and/or examination of records, as described in § 5.53(c), FEMA will continue to search for and/or examine the requested records and will issue a response immediately upon completion of the search and/or examination. Such action in no way suspends the time for FEMA's response to the requestor's appeal which FEMA will continue to process regardless of the response under this paragraph.

(g) If a requestor files suit pending an agency appeal, FEMA nonetheless will continue to process the appeal, and will furnish a response within the twenty day time limit set out in paragraph (c) of this section.

(h) If, on appeal, the denial of the request for records is in whole or in part upheld, the Deputy Director will promptly furnish the requestor a copy of the ruling in writing within the twenty day time limit set out in paragraph (c) of this section except as provided in § 5.55. The notification letter shall contain:

(1) A brief description of the record or records requested;

(2) A statement of the legal basis for nondisclosure;

(3) A statement of the name and title or position of the official or officials responsible for the denial of the initial request as described in § 5.54 and the denial of the appeal as described in paragraph (f) of this section, and

(4) A statement of the requestor's rights of judicial review.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980; 50 FR 40006, Oct. 1, 1985]

§ 5.56 Extension of time limits.

In unusual circumstances as specified in this section, the time limits prescribed in §§ 5.52 and 5.55 may be extended by an official named in § 5.54(a) who will provide written notice to the requestor setting forth the reasons for such extension and the date on which a determination is expected. Such notice will specify no date that would result in an extension of more than ten work days. In unusual circumstances, the Headquarters FOIA Officer may authorize more than one extension, divided between the initial request stage and the appeals stage, but in no event will the combined periods of extension exceed ten work days. As used in this section, "unusual circumstances" include only those circumstances where extension of time is reasonably necessary to the proper processing of the particular request. Examples include:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency or with a non-Federal source having a substantial interest in the determination of the request or among two or more components of FEMA having substantial subject matter interest therein.

§ 5.57 Predisclosure notification procedures for confidential commercial information.

(a) *In general.* Business information provided to FEMA by a business submitter shall not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) "Confidential commercial information" means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information to the government. The term "submitter" includes, but is not limited to, corporations, State governments, and foreign governments.

(b) *Notice to business submitters.* FEMA shall provide a submitter with prompt notice of receipt of a Freedom of Information Act request encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as provided in paragraph (g) of this section. The written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* (1) For confidential commercial information submitted prior to January 1, 1988, FEMA shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The records are less than 10 years old and the information has been designated by the submitter as confidential commercial information;

(ii) FEMA has reason to believe that disclosure of the information could reasonably result in commercial or financial injury to the submitter; or

(iii) The information is subject to prior express commitment of confidentiality given by FEMA to the submitter.

(2) For confidential commercial information submitted to FEMA on or after January 1, 1988, FEMA shall provide a submitter with notice of receipt of a FOIA request whenever:

(i) The submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) FEMA has reason to believe that disclosure of the information could reasonably result in commercial or financial injury to the submitter.

(3) Notice of a request for confidential commercial information falling within paragraph (c)(2)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) Whenever possible, the submitter's claim of confidentiality shall be supported by a statement or certification by an officer or authorized representative of the company that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, FEMA shall afford a submitter 7 working days within which to provide FEMA with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemptions of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information which is considered privileged or confidential. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, FEMA shall notify the requester that such notice has been given to the submitter. The requester will be further advised that a delay in responding to the request, i.e., 10 working days after receipt of the request by FEMA or 20 working days after receipt of the request by FEMA if the time limits are extended under unusual circumstances permitted by the FOIA, may be considered a denial of access to records and the requester may proceed with an adminstrative appeal or seek judicial review, if appropriate.

(e) *Notice of intent to disclose.* FEMA shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever FEMA decides to disclose business information over the objection of a submitter, FEMA shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which is 7 working days after the notice of the final decision to release the requested information has been mailed to the submitter. FEMA shall inform the submitter that disclosure will be made by the specified disclosure date, unless the submitter seeks a court injunction to prevent its release by the date. When notice is given to a submitter under this section, FEMA shall notify the requester that such notice has been given to the submitter and the proposed date for disclosure.

(f) *Notice of lawsuit.* (1) Whenever a requester brings legal action seeking to compel disclosure of business information covered by paragraph (c) of this section, FEMA shall promptly notify the submitter.

(2) Whenever a submitter brings legal action seeking to prevent disclosure of business information covered by paragraph (c) of this section, FEMA shall promptly notify the requester.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) FEMA determines that the information shall not be disclosed;

(2) The information has been published or otherwise officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The information was required in the course of a lawful investigation of a possible violation of criminal law.

[53 FR 2740, Feb. 1, 1988]

§ 5.58 Exhaustion of administrative remedies.

Any person making a request to FEMA for records under this part shall be deemed to have exhausted his administrative remedies with respect to the request if the agency fails to comply with the applicable time limit provisions set forth in §§ 5.52 and 5.55.

[44 FR 50287, Aug. 27, 1979. Redesignated at 53 FR 2740, Feb. 1, 1988]

§ 5.59 Judicial relief available to the public.

Upon denial of a requestor's appeal by the Deputy Director the requester may file a complaint in a district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4)(B).

[44 FR 50287, Aug. 27, 1979. Redesignated at 53 FR 2740, Feb. 1, 1988]

§ 5.60 Disciplinary action against employees for "arbitrary or capricious" denial.

Pursuant to 5 U.S.C. 552(a)(4)(F), whenever the district court, described in § 5.59 orders the production of any FEMA records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether FEMA personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel in the Merit Systems Protection Board is required to initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who primarily was responsible for the withholding. The Special Counsel after investigation and consideration of the evidence submitted, submits findings and recommendations to the Director of FEMA and sends copies of the findings and recommendations to the officer or employee or his or her representative. The law requires the Director to take any corrective action which the Special Counsel recommends.

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980. Redesignated and amended at 53 FR 2740, Feb. 1, 1988]

§ 5.61 Contempt for noncompliance.

In the event of noncompliance by FEMA with an order of a district court pursuant to § 5.60, the district court may punish for contempt the FEMA employee responsible for the noncompliance, pursuant to 5 U.S.C. 552(a)(4)(G).

[44 FR 50287, Aug. 27, 1979, as amended at 45 FR 1422, Jan. 7, 1980; 50 FR 40006, Oct. 1, 1985. Redesignated and amended at 53 FR 2740, Feb. 1, 1988]

Subpart E—Exemptions

§ 5.70 General.

The exemptions enumerated in 5 U.S.C. 552(b), under which the provisions for availability of records and informational materials will not apply, are general in nature. FEMA will decide each case on its merits in accordance with the FEMA policy expressed in Subpart A.

§ 5.71 Categories of records exempt from disclosure under 5 U.S.C. 552.

5 U.S.C. 552(b) provides that the requirements of the statute do not apply to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified pursuant to such Executive Order.

(b) Related solely to the internal personnel rules and practices of an agency.

(c) Specifically exempted from disclosure by statute other than section 552(b) of Title 5, provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (2) establishes particular criteria for withholding or refers to particular types of matter to be withheld.

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency.

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Records or information compiled for law enforcment purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) Geological and geophysical information and data, including maps, concerning wells. Any reasonably segregable portion of a record shall be provided to any person requesting the record after deletion of the portions which are exempt under this section.

(j) Whenever a request is made which involves access to records described in paragraph (g)(1) of this section and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, FEMA may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

[44 FR 50287, Aug. 27, 1979, as amended at 52 FR 13679, Apr. 24, 1987]

§ 5.72 Executive privilege exemption.

Where application of the executive privilege exemption is desired, the matter shall be forwarded to the Director for consideration. If the request for information is Congressional, only the President may invoke the exemption. Presidential approval is not necessarily required if the request for information is in connection with judicial or adjudicatory proceedings or otherwise. In connection with judicial proceedings, the response shall be coordinated with the Department of Justice.

Subpart F—Subpoena or Other Legal Demands for Records and Authentication of Copies of Records

§ 5.80 Service of subpoena or other legal demand.

(a) A subpoena duces tecum or other legal demand by a court or other authority for the production of records held by FEMA should be addressed to the General Counsel, FEMA, Washington, DC 20472. For Regional records the subpoena should be addressed to the appropriate Regional Director listed in § 5.26.

(b) When such a subpoena or demand is served on any employee of FEMA other than as provided in paragraph (a) of this section, unless otherwise directed by the Director such employees shall decline respectfully to produce such records on the ground that such employee is without authority under this Subpart F to do so.

§ 5.81 Compliance with subpoena or other legal demand.

Officials served with subpoena will comply with the subpoena or demand insofar as it is practicable by submitting authenticated copies of the records. Original records should be provided only if necessary.

§ 5.82 Authentication and attestation of copies.

The Director, Deputy Director, Associate Directors, Administrators, the General Counsel, the Docket Clerk, Inspector General, Regional Directors, and their designees, and other heads of offices having possession of records are authorized in the name of the Director to authenticate and attest for copies or reproductions of records. Appropriate fees will be charged for such copies or reproductions.

[47 FR 13149, Mar. 29, 1982]

PART 6—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Subpart A—General

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AUTHORITY: 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978; and E.O. 12127.

SOURCE: 44 FR 50293, Aug. 27, 1979, unless otherwise noted.

Subpart A—General

§ 6.1 Purpose and scope of part.

This part sets forth policies and procedures concerning the collection, use and dissemination of records maintained by the Federal Emergency Management Agency (FEMA) which are subject to the provision of 5 U.S.C. 552a, popularly known as the "Privacy

Act of 1974" (hereinafter referred to as the Act). These policies and procedures govern only those records as defined in § 6.2. Policies and procedures governing the disclosure and availability of records in general are in Part 5 of this chapter. This part also covers: (a) Procedures for notification to individuals of a FEMA system of records pertaining to them; (b) guidance to individuals in obtaining information, including inspections of, and disagreement with, the content of records; (c) accounting of disclosure; (d) special requirements for medical records; and (e) fees.

§ 6.2 Definitions.

For the purpose of this part:

(a) "Agency" includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency (see 5 U.S.C. 552(e)).

(b) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) "Maintain" includes maintain, collect, use, and disseminate.

(d) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to those concerning education, financial transactions, medical history, and criminal or employment history, and that contains the name or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

(e) "System of records" means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identification assigned to that individual.

(f) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) "Routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

(h) "System manager" means the employee of FEMA who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

(i) "Subject individual" means the individual named or discussed in a record of the individual to whom a record otherwise pertains.

(j) "Disclosure" means a transfer of a record, a copy of a record, or any or all of the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

(k) "Access" means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

(l) "Solicitation" means a request by an officer or employee of FEMA that an individual provide information about himself or herself.

(m) "Director" means the Director, FEMA.

(n) "Deputy Director" means the Deputy Director, FEMA, or, in the case of the absence of the Deputy Director, or a vacancy in that office, a person designated by the Director to perform the functions under this regulation of the Deputy Director.

(o) "Privacy Appeals Officer" means the FOIA/Privacy Act Specialist or his/her designee.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980; 51 FR 34604, Sept. 30, 1986]

§ 6.3 Collection and use of information (Privacy Act statements).

(a) *General.* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under FEMA programs will be collected directly from the subject individual to the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the Act and these regulations.

(b) *Solicitation of information.* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purpose for which the information will be used, the routine uses to be made of the information, and the effects on the individual, if any, of not providing the information. The Director, Office of Administrative Support and Regional Directors shall ensure that forms used to solicit information are in compliance with the Act and these regulations.

(c) *Solicitation of Social Security numbers.* Before an employee of FEMA can deny to any individual a right, benefit, or privilege provided by law because such individual refuses to disclose his/her social security account number, the employee of FEMA shall ensure that either:

(1) The disclosure is required by Federal statute; or

(2) The disclosure of a social security number was required under a statute or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975.

If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the FEMA employee who requests an individual to disclose the social security account number shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the use that will be made of it.

(d) *Soliciting information from third parties.* An employee of FEMA shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

[44 FR 50293, Aug. 27, 1979, as amended at 47 FR 13149, Mar. 29, 1982; 48 FR 12091, Mar. 23, 1983; 50 FR 40006, Oct. 1, 1985]

§ 6.4 Standards of accuracy.

The system manager shall ensure that all records which are used by FEMA to make determinations about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

§ 6.5 Rules of conduct.

Employees of FEMA involved in the design, development, operation, or maintenance of any system of records or in maintaining any record, shall conduct themselves in accordance with the rules of conduct concerning the protection of personal information in § 3.25 of this chapter.

§ 6.6 Safeguarding systems of records.

(a) Systems managers shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) Personnel information contained in both manual and automated systems of records shall be protected by implementing the following safeguards:

(1) Official personnel folders, authorized personnel operating or work folders and other records of personnel actions effected during an employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualification, and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnished an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(2) System managers, at their discretion, may designate additional records of unusual sensitivity which require

safeguards similar to those described in paragraph (a) of this section.

(3) A system manager shall permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to a subject individual or his or her representative as provided by this part.

§ 6.7 Records of other agencies.

If FEMA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of FEMA on behalf of that agency, FEMA will advise the requestor that the request has been forwarded to the responsible agency. Records in the custody of FEMA which are the primary responsibility of the Office of Personnel Management are governed by the rules promulgated by it pursuant to the Privacy Act.

§ 6.8 Subpoena and other legal demands.

Access to records in systems of records by subpoena or other legal process shall be in accordance with the provisions of Part 5 of this chapter.

§ 6.9 Inconsistent issuances of FEMA and/or its predecessor agencies superseded.

Any policies and procedures in any issuances of FEMA or any of its predecessor agencies which are inconsistent with the policies and procedures in this part are superseded to the extent of that inconsistency.

§ 6.10 Assistance and referrals.

Requests for assistance and referral to the responsible system manager or other FEMA employee charged with implementing these regulations should be made to the Privacy Appeals Officer, Federal Emergency Management Agency, Washington, D.C. 20472.

[45 FR 17152, Mar. 18, 1980]

Subpart B—Disclosure of Records

§ 6.20 Conditions of disclosure.

No employee of FEMA shall disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To officers or employees of FEMA who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) For a routine use as published in the notices in the Federal Register;

(d) To the Bureau of the Census for use pursuant to Title 13, United States Code;

(e) To a recipient who has provided FEMA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record subject to the following: The record shall be transferred in a form that is not individually identifiable. The written statement should include as a minimum (1) a statement of the purpose for requesting the records; and (2) certification that the records will be used only for statistical purposes. These written statements should be maintained as accounting records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of The National Archives and Records Administration or his designee to determine whether the record has such value;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his designated representative has made a written request to the Director specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health and safety of an individual to whom the record pertains. (Upon such disclosure, a notification must be sent to the last known address of the subject individual.)

(i) To either House of Congress or to a subcommittee or committee (joint or of either House, to the extent that the subject matter falls within their jurisdiction;

(j) To the Comptroller General or any duly authorized representatives of the Comptroller General in the course of the performance of the duties of the General Accounting Office; or

(k) Pursuant to the order of a court of competent jurisdiction.

(l) To consumer reporting agencies as defined in the Fair Credit Reporting Act (35 U.S.C. 1681a(f) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

[44 FR 50293, Aug. 27, 1979, as amended at 48 FR 44543, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985]

§ 6.21 Procedures for disclosure.

(a) Upon receipt of a request for disclosure, the system manager shall verify the right of the requestor to obtain disclosure pursuant to § 6.20. Upon that verification and subject to other requirements of this part, the system manager shall make the requested records available.

(b) If the system manager determines that the disclosure is not permitted under the provisions of § 6.20 or other provisions of this part, the system manager shall deny the request in writing and shall inform the requestor of the right to submit a request for review and final determination to the Director or designee.

§ 6.22 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 6.20 (a) and (b), an accurate accounting of each disclosure shall be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting shall include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(b) The system manager also shall maintain in conjunction with the accounting of disclosures;

(1) A full statement of the justification for the disclosure.

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent to a disclosure given by the subject individual.

(c) Except for the accounting of disclosures made to agencies or instrumentalities in law enforcement activities in accordance with § 6.20 (g) or of disclosures made from exempt systems the accounting of disclosures shall be made available to the individual upon request. Procedures for requesting access to the accounting are in Subpart C of this part.

Subpart C—Individual Access to Records

§ 6.30 Form of requests.

(a) An individual who seeks access to his or her record or to any information pertaining to the individual which is contained in a system of records should notify the system manager at the address indicated in the FEDERAL REGISTER notice describing the pertinent system. The notice should bear the legend "Privacy Act Request" both on the request letter and on the envelope. It will help in the processing of a request if the request letter contains the complete name and identifying number of the system as published in the FEDERAL REGISTER; the full name and address of the subject individual; a brief description of the nature, time, place, and circumstances of the individual's association with FEMA; and any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records. The system manager shall answer or acknowledge the request within 10 workdays of its receipt by FEMA.

(b) The system manager, at his discretion, may accept oral requests for access subject to verification of identity.

§ 6.31 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the U.S. Office of Personnel Management and are described in Chapter 339, Federal Personnel Manual (medical records about entrance qualifications or fitness for duty, or medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal Medical Officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the Office of Personnel Management for determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, or the guardian or conservator of the individual.

(c) If, in the opinion of a Federal Medical Officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall release it to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

§ 6.32 Granting access.

(a) Upon receipt of a request for access to non-exempt records, the system manager shall make these records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by FEMA. The acknowledgment shall indicate when the system manager will make the records available.

(b) If the system manager anticipates more than a 10 day delay in making a record available, he or she also shall include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, the system manager shall request additional information from the individual and shall have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and indicate when the records will be available.

(d) Records will be available for authorized access during normal business hours at the offices where the records are located. A requestor should be prepared to identify himself or herself by signature; i.e., to note by signature the date of access and/or produce other identification verifying the signature.

(e) Upon request, a system manager shall permit an individual to examine the original of a non-exempt record, shall provide the individual with a copy of the record, or both. Fees shall be charged in accordance with Subpart F.

(f) An individual may request to pick up a record in person or to receive it by mail, directed to the name and address provided by the individual in the request. A system manager shall not make a record available to a third party for delivery to the subject individual except for medical records as outlined in § 6.31.

(g) An individual who selects another person to review, or to accompany the individual in reviewing or obtaining a copy of the record must, prior to the disclosure, sign a statement authorizing the disclosure of the record. The system manager shall maintain this statement with the record.

(h) The procedure for access to an accounting of disclosure is identical to the procedure for access to a record as set forth in this section.

§ 6.33 Denials of access.

(a) A system manager may deny an individual access to that individual's record only upon the grounds that FEMA has published the rules in the FEDERAL REGISTER exempting the pertinent system of records from the access requirement. These exempt systems of records are described in Subpart G of this part.

(b) Upon receipt of a request for access to a record which the system manager believes is contained within an exempt system of records he or she shall forward the request to the appropriate official listed below or to his or her delegate through normal supervisory channels.

(1) Deputy Director
(2) [Reserved]
(3) Federal Insurance Administrator
(4) Associate Directors
(5) United States Fire Administrator
(6) Chief of Staff
(7) Office Directors
(8) General Counsel
(9) Inspector General
(10) Comptroller
(11) Regional Directors

The system manager shall append to the request an explanation of the determination that the requested record is contained within an exempt system of records and a recommendation that the request be denied or granted.

(c) In the event that the system manager serves in one of the positions listed in paragraph (b) of this section, he or she shall retain the responsibility for denying or granting the request.

(d) The appropriate official listed in paragraph (b) of this section shall, in consultation with the Office of General Counsel and such other officials as deemed appropriate, determine if the request record is contained within an exempt system of records and:

(1) If the record is not contained within an exempt system of records, the above official shall notify the system manager to grant the request in accordance with § 6.32, or

(2) If the record is contained within an exempt system said official shall;

(i) Notify the requestor that the request is denied, including a statement justifying the denial and advising the requestor of a right to judicial review of that decision as provided in § 6.57, or

(ii) Notify the system manager to make record available to the requestor in accordance with § 6.31, notwithstanding the record's inclusion within an exempt system.

(e) The appropriate official listed in paragraph (b) of this section shall provide the Privacy Appeals Office with a copy of any denial of a requested access.

[44 FR 50293, Aug. 27, 1979, as amended at 48 FR 44543, Sept. 29, 1983; 50 FR 40006, Oct. 1, 1985; 51 FR 34604, Sept. 30, 1986]

§ 6.34 Appeal of denial of access within FEMA.

A requestor denied access in whole or in part, to records pertaining to that individual, exclusive of those records for which the system manager is the Director, may file an administrative appeal of that denial. Appeals of denied access will be processed in the same manner as processing for appeals from a denial of a request to amend a record set out in § 6.55, regardless whether the denial being appealed is made at headquarters or by a regional official.

Subpart D—Requests to Amend Records

§ 6.50 Submission of requests to amend records.

An individual who desires to amend any record containing personal information about the individual should direct a written request to the system manager specified in the pertinent FEDERAL REGISTER notice concerning FEMA's systems of records. A current FEMA employee who desires to amend personnel records should submit a written request to the FEMA Director of Personnel, Washington, DC 20472. Each request should include evidence of and justification for the need to amend the pertinent record. Each request should bear the legend "Privacy Act—Request to Amend Record" prominently marked on both the face of the request letter and the envelope.

§ 6.51 Review of requests to amend records.

(a) The system manager shall acknowledge the receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment shall include the system manager's determination either to amend the record or to deny the request to amend as provided in § 6.53.

(b) When reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment and shall determine whether the request for the amendment is justified. With respect to a request to delete information, the system manager also shall review the request and the existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by statute or Executive Order.

§ 6.52 Approval of requests to amend records.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly shall make the necessary corrections to the record and shall send a copy of the corrected record to the individual. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record of the fact that a correction has been made and the substance of the correction. Where practicable, the system manager shall advise the Privacy Appeals Officer that a request to amend has been approved.

§ 6.53 Denial of requests to amend records.

(a) If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, he shall refer the request to amend and his determinations and recommendations to the appropriate official listed in § 6.33(b) through normal supervisory channels.

(b) If the official listed in § 6.33, after reviewing the request to amend a record, determines to amend the record in accordance with the request, said official promptly shall return the request to the system manager with instructions to make the requested amendments in accordance with § 6.52.

(c) If the appropriate official listed in § 6.33, after reviewing the request to amend a record, determines not to amend the record in accordance with the request, the requestor shall be promptly advised in writing of the determination. The refusal letter (1) shall state the reasons for the denial of the request to amend; (2) shall include proposed alternative amendments, if appropriate; (3) shall state the requestor's right to appeal the denial of the request to amend; and (4) shall state the procedures for appealing and the name and title of the official to whom the appeal is to be addressed.

(d) The appropriate official listed in § 6.33 shall furnish the Privacy Appeals Officer a copy of each initial denial of a request to amend a record.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

§ 6.54 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments, and if the requestor agrees to accept them, he or she must notify the official who signed the denial. That official immediately shall instruct the system manager to make the necessary amendments in accordance with § 6.52.

§ 6.55 Appeal of denial of request to amend a record.

(a) A requestor who disagrees with a denial of a request to amend a record may file an administrative appeal of that denial. The requestor should address the appeal to the FEMA Privacy Appeals Officer, Washington, DC 20472. If the requestor is an employee of FEMA and the denial to amend involves a record maintained in the employee's Official Personnel Folder covered by an Office of Personnel Management Government-wide system notice, the appeal should be addressed to the Assistant Director, Information Systems, Agency Compliance and Evaluation Group, Office of Personnel Management, Washington, DC 20415.

(b) Each appeal to the Privacy Act Appeals Officer shall be in writing and must be received by FEMA no later than 30 calendar days from the requestor's receipt of a denial of a request to amend a record. The appeal should bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Privacy Act Appeals Officer shall consult with the system manager, the official who made the denial, the General Counsel or a member of that office, and such other officials as may be appropriate. If the Privacy Act Appeals Officer in consultation with these officials, determines that the record should be amended, as requested, the system manager shall be instructed immediately to amend the record in accordance with § 6.52 and shall notify the requestor of that action.

(d) If the Privacy Act Appeals Officer, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Privacy Act Appeals Officer shall submit the file on the request and appeal, including findings and recommendations, to the Deputy Director for a final administrative determination.

(e) If the Deputy Director determines that the record should be amended as requested, he or she immediately shall instruct the system manager in writing to amend the record in accordance with § 6.52. The Deputy Director shall send a copy of those instructions to the Privacy Act Appeals Officer, who shall notify the requester of that action.

(f) If the Deputy Director determines to reject the appeal, the requestor shall immediately be notified in writing of that determination. This action shall constitute the final administrative determination on the request to amend the record and shall include:

(1) The reasons for the rejection of the appeal.

(2) Proposed alternative amendments, if appropriate, which the requestor subsequently may accept in accordance with § 6.54.

(3) Notice of the requestor's right to file a Statement of Disagreement for distribution in accordance with § 6.56.

(4) Notice of the requestor's right to seek judicial review of the final administrative determination, as provided in § 6.57.

(g) The final agency determination must be made no later than 30 workdays from the date on which the appeal is received by the Privacy Act Appeals Officer.

(h) In extraordinary circumstances, the Director may extend this time limit by notifying the requestor in writing before the expiration of the 30 workdays. The Director's notification will include a justification for the extension.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

§ 6.56 Statement of disagreement.

Upon receipt of a final administrative determination denying a request to amend a record, the requestor may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement should include an explanation of why the requestor believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager shall maintain the Statement of Disagreement in conjunction with the pertinent record, and shall include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager shall provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 6.22.

§ 6.57 Judicial review.

Within 2 years of receipt of a final administrative determination as provided in § 6.34 or § 6.55, a requestor may seek judicial review of that determination. A civil action must be filed in the Federal District Court in which the requestor resides or has his or her principal place of business or in which the agency records are situated, or in the District of Columbia.

Subpart E—Report on New Systems and Alternations of Existing Systems

§ 6.70 Reporting requirement.

(a) No later than 90 calendar days prior to the establishment of a new system of records, the prospective system manager shall notify the Privacy Appeals Officer of the proposed new system. The prospective system manager shall include with the notification a completed FEMA Form 11-2, System of Records Covered by the Privacy Act of 1974, and a justification for each system of records proposed to be established. If the Privacy Appeals Officer determines that the establishment of the proposed system is in the best interest of the Government, then no later than 60 calendar days prior to the establishment of that system of records, a report of the proposal shall be submitted by the Director or a designee thereof, to the President of the Senate, the Speaker of the House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(b) No later than 90 calendar days prior to the alteration of a system of records, the system manager responsible for the maintenance of that system of records shall notify the Privacy Appeals Officer of the proposed alteration. The system manager shall include with the notification a completed FEMA Form 11-2. System of Records Covered by the Privacy Act of 1974, and a justification for each system of records he proposes to alter. If it is determined that the proposed alteration is in the best interest of the Government, then, the Director, or a designee thereof, shall submit, no later than 60 calendar days prior to the establishment of that alteration, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(c) The reports required by this regulation are exempt from reports control.

(d) The Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget may waive the time requirements set out in this section upon a finding that a delay in the establishing or amending the system would not be in the public interest and showing how the public interest would be adversely affected if the waiver were not granted and otherwise complying with OMB Circular A-130.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980; 51 FR 34604, Sept. 30, 1986]

§ 6.71 Federal Register notice of establishment of new system or alteration of existing system.

Notice of the proposed establishment or alteration of a system of records shall be published in the FEDERAL REGISTER, in accordance with FEMA procedures when:

(a) Notice is received that the Senate, the House of Representatives, and the Office of Management and Budget do not object to the establishment of a new system or records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days elapse from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt of an objection to the proposal. The notice shall include all of the information required to be provided in FEMA Form 11-2, System of Records Covered by the Privacy Act of 1974, and such other information as the Director deems necessary.

§ 6.72 Effective date of new system of records or alteration of an existing system of records.

Systems of records proposed to be established or altered in accordance with the provisions of this subpart shall be effective no sooner than 30 calendar days from the publication of the notice required by § 6.71.

Subpart F—Fees

§ 6.80 Records available at fee.

The system manager shall provide a copy of a record to a requestor at a fee prescribed in § 6.85 unless the fee is waived under § 6.82.

[44 FR 50293, Aug. 27, 1979, as amended at 45 FR 17152, Mar. 18, 1980]

§ 6.81 Additional copies.

A reasonable number of additional copies shall be provided for the applicable fee to a requestor who indicates that he has no access to commercial reproduction services.

§ 6.82 Waiver of fee.

The system manager shall make one copy of a record, up to 300 pages, available without charge to a requestor who is an employee of FEMA. The system manager may waive the fee requirement for any other requestor if the cost of collecting the fee is an unduly large part of, or greater than, the fee, or when furnishing the record without charge conforms to generally established business custom or is in the public interest.

[44 FR 50287, Aug. 27, 1979, as amended at 52 FR 13679, Apr. 24, 1987]

§ 6.83 Prepayment of fees.

(a) When FEMA estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, FEMA may require a requester to make an advance payment of the entire fee before continuing to process the request.

(b) When a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), FEMA may require the requester to pay the full amount owed plus any applicable interest as provided in § 6.85(d), and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

(c) When FEMA acts under § 5.44 (a) or (b), the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from the receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after FEMA has received fee payments described under § 5.44 (a) or (b).

[52 FR 13679, Apr. 24, 1987]

§ 6.84 Form of payment.

Payment shall be by check or money order payable to The Federal Emergency Management Agency and shall be addressed to the system manager.

§ 6.85 Reproduction fees.

(a) *Duplication costs.* (1) For copies of documents reproduced on a standard office copying machine in sizes up to 8½ x 14 inches, the charge will be $.15 per page.

(2) The fee for reproducing copies of records over 8½ x 14 inches or whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources. If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(3) For other methods of reproduction or duplication, FEMA shall charge the actual direct costs of producing the document(s). If FEMA estimates that the allowable duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his/her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the objective of reformulating the request to meet his/her needs at a lower cost.

(b) Interest may be charge to those requesters who fail to pay fees charged. FEMA may begin assessing interest charges on the amount billed starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.

[52 FR 13679, Apr. 24, 1987]

Subpart G—Exempt Systems of Records

§ 6.86 General exemptions.

(a) Whenever the Director, Federal Emergency Management Agency, determines it to be necessary and proper, with respect to any system of records maintained by the Federal Emergency Management Agency, to exercise the right to promulgate rules to exempt such systems in accordance with the provisions of 5 U.S.C. 552a (j) and (k), each specific exemption, including the parts of each system to be exempted, the provisions of the Act from which they are exempted, and the justification for each exemption shall be published in the FEDERAL REGISTER as part of FEMA's Notice of Systems of Records.

(b) Exempt under 5 U.S.C. 552a(j)(2) from the requirements of 5 U.S.C. 552a(c) (3) and (4), (d), (e) (1), (2), (3), (e)(4) (G), (H), and (I), (e) (5) and (8) (f) and (g) of the Privacy Act.

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552(j)(2), shall be exempt from the provisions of 5 U.S.C. 552a listed in paragraph (b) of this section.

General Investigative Files (FEMA/IG-2)—Limited Access

(2) *Reasons for exemptions.* (i) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed system of records would give individuals an opportunity to learn whether they are of record either as suspects or as subjects of a criminal investigation; this would compromise the ability of the Federal Emergency Management Agency to complete investigations and identify or detect violators of laws administered by the Federal Emergency Management Agency or other Federal agencies. Individuals would be able (A) to take steps to avoid detection, (B) to inform co-conspirators of the fact that an investigation is being conducted, (C) to learn the nature of the investigation to which they are being subjected, (D) to learn the type of surveillance being utilized, (E) to learn whether they are only suspects or identified law violators, (F) to continue to resume their illegal conduct without fear of detection upon learning that they are not in a particular system of records, and (G) to destroy evidence needed to prove the violation.

(ii) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) enable individuals to gain access to records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed system of records would compromise its ability to complete or continue criminal investigations and to detect or identify violators of laws administered by the Federal Emergency Management Agency or other Federal agencies. Permitting access to records contained in the above-listed system of records would provide individuals with significant information concerning the nature of the investigation, and this could enable them to avoid detection or apprehension in the following ways:

(A) By discovering the collection of facts which would form the basis for their arrest, (B) by enabling them to destroy evidence of criminal conduct which would form the basis for their arrest, and (C) by learning that the criminal investigators had reason to believe that a crime was about to be committed, they could delay the commission of the crime or change the scene of the crime to a location which might not be under surveillance. Granting access to ongoing or closed investigative files would also reveal investigative techniques and procedures, the knowledge of which could enable individuals planning criminal activity to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing law enforcement officers' established investigative tools and procedures. Further, granting access to investigative files and records could disclose the identity of confidential sources and other informers and the nature of the information which they supplied, thereby endangering the life or physical safety of those sources of information by exposing them to possible reprisals for having provided information relating to the criminal activities of those individuals who are the subjects of the investigative files and records; confidential sources and other informers might refuse to provide criminal investigators with valuable information if they could not be secure in the knowledge that their identities would not be revealed through disclosure of either their names or the nature of the information they supplied, and this would seriously impair the ability of the Federal Emergency Management Agency to carry out its mandate to enforce criminal and related laws. Additionally, providing access to records contained in the above-listed system of records could reveal the identities of undercover law enforcement personnel who compiled information regarding individual's criminal activities, thereby endangering the life or physical safety of those undercover personnel or their families by exposing them to possible reprisals.

(iii) 5 U.S.C. 552a(d) (2), (3) and (4), (e)(4)(H) and (f)(4), which are dependent upon access having been granted to records pursuant to the provisions cited in paragraph (b)(2)(ii) of this section, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Federal Emergency Management Agency believes that the reasons set forth in paragraph (b)(2)(ii) of this section are equally applicable to this paragraph and, accordingly, those reasons are hereby incorporated herein by reference.

(iv) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature and purpose of each disclosure of a record and the name and address of the recipient. The Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would impair the ability of other law enforcement agencies to make effective use of information provided by the Federal Emergency Management Agency in connection with the investigation, detection and apprehension of violators of the criminal laws enforced by those other law enforcement agencies. Making accountings of disclosure available to violators or possible violators would alert those individuals to the fact that another agency is conducting an investigation into their criminal activities, and this could reveal the geographic location of the other agency's investigation, the nature and purpose of that investigation, and the dates on which that investigation was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, by transferring their criminal activities to other geographic areas or by destroying or concealing evidence which would form the basis for their arrest. In addition, providing violators with accountings of disclosure would alert those individuals to the fact that the Federal Emergency Management Agency has information regarding their criminal activities and could inform those individuals of the general nature of that information; this, in turn, would afford those individuals a better opportunity to take appropriate steps to avoid detection or apprehension for violations of criminal and related laws.

(v) 5 U.S.C. 552a(c)(4) requires that an agency inform any person or other agency about any correction or notation of dispute made by the agency in accordance with 5 U.S.C. 552a(d) of any record that has been disclosed to the person or agency if an accounting of the disclosure was made. Since this provision is dependent on an individual's having been provided an opportunity to contest (seek amendment to) records pertaining to him/her, and

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since the above-listed system of records is proposed to be exempt from those provisions of 5 U.S.C. 552a relating to amendments of records as indicated in paragraph (b)(2)(iii) of this section, the Federal Emergency Management Agency believes that this provision should not be applicable to the above system of records.

(vi) 5 U.S.C. 552a(e)(4)(I) requires that an agency publish a public notice listing the categories of sources for information contained in a system of records. The categories of sources of this system of records have been published in the Federal Register in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary in order to protect the confidentiality of the sources of criminal and other law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(vii) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the Federal Emergency Management Agency, there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Federal Emergency Management Agency; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of an investigation, and in many cases, information which initially appears to be irrelevant or unnecessary may, upon further evaluation or upon continuation of the investigation, prove to have particular relevance to an enforcement program of the Federal Emergency Management Agency. Further, not all violations of law discovered during a criminal investigation fall within the investigative jurisdiction of the Federal Emergency Management Agency; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Federal Emergency Management Agency should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to the attention of the Federal Emergency Management Agency through the conduct of a lawful FEMA investigation. The Federal Emergency Management Agency, therefore, believes that it is appropriate to exempt the above-listed system of records from the provisions of 5 U.S.C. 552a(e)(1).

(viii) 5 U.S.C. 552a(e)(2) requires that an agency collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would impair the ability of the Federal Emergency Management Agency to conduct investigations and to identify or detect violators of criminal or related laws for the following reasons:

(A) Most information collected about an individual under criminal investigations is obtained from third parties such as witnesses and informers, and it is usually not feasible to rely upon the subject of the investigation as a source for information regarding his/her criminal activities, (B) an attempt to obtain information from the subject of a criminal investigation will often alert that individual to the existence of an investigation, thereby affording the individual an opportunity to attempt to conceal his/her criminal activities so as to avoid apprehension, (C) in certain instances, the subject of a criminal investigation is not required to supply information to

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criminal investigators as a matter of legal duty, and (D) during criminal investigations it is often a matter of sound investigative procedures to obtain information from a variety of sources in order to verify information already obtained.

(ix) 5 U.S.C. 552a(e)(3) requires that an agency inform each individual whom it asks to supply information, either on the form which the agency uses to collect the information or on a separate form which can be retained by the individual, with the following information: The authority which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purposes for which the information is intended to be used; the routine uses which may be made of the information; and the effects on the individual of not providing all or part of the requested information. The Federal Emergency Management Agency believes that the above-listed system of records should be exempted from this provision in order to avoid adverse effects on its ability to identify or detect violators of criminal or related laws. In many cases, information is obtained by confidential sources, other informers or undercover law enforcement officers under circumstances where it is necessary that the true purpose of their actions be kept secret so as to avoid alerting the subject of the investigation or his/her associates that a criminal investigation is in process. Further, if it became known that the undercover officer was assisting in a criminal investigation, that officer's life or physical safety could be endangered through reprisal, and, under such circumstances it may not be possible to continue to utilize that officer in the investigation. In many cases, individuals, for personal reasons, would feel inhibited in talking to a person representing a criminal law enforcement agency but would be willing to talk to a confidential source or undercover officer who they believe is not involved in law enforcement activities. In addition, providing a source of information with written evidence that he was a source, as required by this provision, could increase the likelihood that the source of information would be the subject of retaliatory action by the subject of the investigation. Further, application of this provision could result in an unwarranted invasion of the personal privacy of the subject of the criminal investigation, particularly where further investigation would result in a finding that the subject was not involved in any criminal activity.

(x) 5 U.S.C. 552a(e)(5) requires that an agency maintain all records used by the agency in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. Since 5 U.S.C. 552a(a)(3) defines "maintain" to include "collect" and "disseminate," application of this provision to the above-listed system of records would hinder the initial collection of any information which could not, at the moment of collection, be determined to be accurate, relevant, timely and complete. Similarly, application of this provision would seriously restrict the necessary flow of information from the Federal Emergency Management Agency to other law enforcement agencies when a FEMA investigation revealed information pertaining to a violation of law which was under investigative jurisdiction of another agency. In collecting information during the course of a criminal investigation, it is not possible or feasible to determine accuracy, relevance, timeliness or completeness prior to collection of the information; in disseminating information to other law enforcement agencies it is often not possible to determine accuracy, relevance, timeliness or completeness prior to dissemination because the disseminating agency may not have the expertise with which to make such determinations. Further, information which may initially appear to be inaccurate, irrelevant, untimely or incomplete may, when gathered, grouped, and evaluated with other available information, become more pertinent as an investigation progresses. In addition, application of this provision could seriously impede criminal investigators and intelligence analysts in the exercise of their judgment in reporting on results obtained during criminal investigations. The Federal Emergency Management Agency believes that it is appropriate to exempt the above-listed system of records from the provisions of 5 U.S.C. 552a(e)(5).

(xi) 5 U.S.C. 552a(e)(8) requires that an agency make reasonable effort to serve notice on an individual when any record on the individual is made available to any person under compulsory legal process when such process becomes a matter of public record. The Federal Emergency Management Agency believes that the above-listed system of records should be exempt from this provision in order to avoid revealing investigative techniques and procedures outlined in those records and in order to prevent revelation of the existence on an on-going investigation where there is a need to keep the existence of the investigation secret.

(xii) 5 U.S.C. 552a(g) provides civil remedies to an individual for an agency's refusal to amend a record or to make a review of a request for amendment; for an agency's refusal to grant access to a record; for an agency's failure to maintain accurate, relevant, timely and complete records which are used to make a determination which is adverse to the individual; and for an agency's failure to comply with any other provision of 5 U.S.C. 552a in such a way as to have an adverse effect on an individual. The Federal Emergency Management Agency believes that the above-listed system of records should be exempted from this provision to the extent that the civil remedies provided therein may relate to provisions of 5 U.S.C. 552a from which the above-listed system of records is proposed to be exempt. Since the provisions of 5 U.S.C. 552a enumerated in paragraphs (b)(2)(i) through (xi) of this section are proposed to be inapplicable to the above-listed systems of records for the reasons stated therein, there should be no corresponding civil remedies for failure to comply with the requirements of those provisions to which the exemption is proposed to apply. Further, the Federal Emergency Management Agency believes that application of this provision to the above-listed system of records would adversely affect its ability to conduct criminal investigations by exposing to civil court action every stage of the criminal investigative process in which information is compiled or used in order to identify, detect, or otherwise investigate persons suspected or known to be engaged in criminal conduct.

(xiii) Individuals may not have access to another agency's records, which are contained in files maintained by the Federal Emergency Management Agency, when that other agency's regulations provide that such records are subject to general exemption under 5 U.S.C. 552a(j). If such exempt records are within a request for access, FEMA will advise the individual of their existence and of the name and address of the source agency. For any further information concerning the record and the exemption, the individual must contact that source agency.

[45 FR 64580, Sept. 30, 1980]

§ 6.87 Specific exemptions.

(a) *Exempt under 5 U.S.C 552a(k)(1).* The Director, Federal Emergency Management Agency has determined that certain systems of records may be exempt from the requirements of (c)(3) and (d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12356 or any subsequent Executive order and which are required to be kept secret in the interest of national defense or foreign policy. To the extent that this occurs, such records in the following systems would be exempt:

Claims (litigation) (FEMA/GC-1)—Limited Access
FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access
General Investigative Files (FEMA/IG-1)—Limited Access
Security Management Information System (FEMA/SEC-1)—Limited Access

(b) *Exempt under 5 U.S.C. 552a(k)(2) from the requirements of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f).* The Federal Emergency Management Agency will not deny individuals access to information which has been used to deny them a right, privilege, or benefit to which they would otherwise be entitled.

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a(k)(2), shall be exempt from the provisions of 5 U.S.C. 552a(k)(2) listed in paragraph (b) of this section.

Claims (litigation) (FEMA/GC-1)—Limited Access
FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access
General Investigative Files (FEMA/IG-1)—Limited Access
Equal Employment Opportunity Complaints of Discrimination Files (FEMA/PER-2)—Limited Access

(2) *Reasons for exemptions.* (i) 5 U.S.C. 552a (e)(4)(G) and (f)(1) enable individuals to be notified whether a system of records contains records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed systems of records would impair the ability of FEMA to successfully complete investigations and inquiries of suspected violators of civil and criminal laws and regulations under its jurisdiction. In many cases investigations and inquiries into violations of civil and criminal laws and regulations involve complex and continuing patterns of behavior. Individuals, if informed, that they have been identified as suspected violators of civil or criminal laws and regulations, would have an opportunity to take measures to prevent detection of illegal action so as to avoid prosecution or the imposition of civil sanctions. They would also be able to learn the nature and location of the investigation or inquiry, the type of surveillance being utilized, and they would be able to transmit this knowledge to co-conspirators. Finally, violators might be given the opportunity to destroy evidence needed to prove the violation under investigation or inquiry.

(ii) 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2), (3) and (5) enable individuals to gain access to records pertaining to them. The Federal Emergency Management Agency believes that application of these provisions to the above-listed systems of records would impair its ability to complete or continue civil or criminal investigations and inquiries and to detect violators of civil or criminal laws. Permitting access to records contained in the above-listed systems of records would provide violators with significant information concerning the nature of the civil or criminal investigation or inquiry. Knowledge of the facts developed during an investigation or inquiry would enable violators of criminal and civil laws and regulations to learn the extent to which the investigation or inquiry has progressed, and this could provide them with an opportunity to destroy evidence that would form the basis for prosecution or the imposition of civil sanctions. In addition, knowledge gained through access to investigatory material could alert a violator to the need to temporarily postpone commission of the violation or to change the intended point where the violation is to be committed so as to avoid detection or apprehension. Further, access to investigatory material would disclose investigative techniques and procedures which, if known, could enable violators to structure their future operations in such a way as to avoid detection or apprehension, thereby neutralizing investigators' established and effective investigative tools and procedures. In addition, investigatory material may contain the identity of a confidential source of information or other informer who would not want his/her identity to be disclosed for reasons of personal privacy or for fear of reprisal at the hands of the individual about whom he/she supplied information. In some cases mere disclosure of the information provided by an informer would reveal the identity of the informer either through the process of elimination or by virtue of the nature of the information supplied. If informers cannot be assured that their identities (as sources for information) will remain confidential, they would be very reluctant in the future to provide information pertaining to violations of criminal and civil laws and regulations, and this would seriously compromise the ability of the Federal Emergency Management Agency to carry out its mission. Further, application of 5 U.S.C. 552a (d)(1), (e)(4)(H) and (f)(2),

(3) and (5) to the above-listed systems of records would make available attorney's work product and other documents which contain evaluations, recommendations, and discussions of ongoing civil and criminal legal proceedings; the availability of such documents could have a chilling effect on the free flow of information and ideas within the Federal Emergency Management Agency which is vital to the agency's predecisional deliberative process, could seriously prejudice the agency's or the Government's position in a civil or criminal litigation, and could result in the disclosure of investigatory material which should not be disclosed for the reasons stated above. It is the belief of the Federal Emergency Management Agency that, in both civil actions and criminal prosecutions, due process will assure that individuals have a reasonable opportunity to learn of the existence of, and to challenge, investigatory records and related materials which are to be used in legal proceedings.

(iii) 5 U.S.C. 552a (d)(2), (3) and (4), (e)(4)(H) and (f)(4) which are dependent upon access having been granted to records pursuant to the provisions cited in paragraph (b)(2)(ii) of this section, enable individuals to contest (seek amendment to) the content of records contained in a system of records and require an agency to note an amended record and to provide a copy of an individual's statement (of disagreement with the agency's refusal to amend a record) to persons or other agencies to whom the record has been disclosed. The Federal Emergency Management Agency believes that the reasons set forth in paragraphs (b)(2)(i) of this section are equally applicable to this paragraph, and, accordingly, those reasons are hereby incorporated herein by reference.

(iv) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request; such accountings must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. The Federal Emergency Management Agency believes that application of this provision to the above-listed systems of records would impair the ability of the Federal Emergency Management Agency and other law enforcement agencies to conduct investigations and inquiries into civil and criminal violations under their respective jurisdictions. Making accountings available to violators would alert those individuals to the fact that the Federal Emergency Management Agency or another law enforcement authority is conducting an investigation or inquiry into their activities, and such accountings could reveal the geographic location of the investigation or inquiry, the nature and purpose of the investigation or inquiry and the nature of the information disclosed, and the date on which that investigation or inquiry was active. Violators possessing such knowledge would thereby be able to take appropriate measures to avoid detection or apprehension by altering their operations, transferring their activities to other locations or destroying or concealing evidence which would form the basis for prosecution or the imposition of civil sanctions.

(v) 5 U.S.C. 552a(e)(1) requires that an agency maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The term "maintain" as defined in 5 U.S.C. 552a(a)(3) includes "collect" and "disseminate." At the time that information is collected by the Federal Emergency Management Agency there is often insufficient time to determine whether the information is relevant and necessary to accomplish a purpose of the Federal Emergency Management Agency; in many cases information collected may not be immediately susceptible to a determination of whether the information is relevant and necessary, particularly in the early stages of investigation or inquiry, and in many cases information which initially appears to be irrelevant or unnecessary may, upon further evaluation or upon continuation of the investigation or inquiry, prove to have particular relevance to an enforcement program of the Federal Emergency Management Agency. Further, not all violations of law uncovered during a Federal Emergency Management

Agency inquiry fall within the civil or criminal jurisdiction of the Federal Emergency Management Agency; in order to promote effective law enforcement, it often becomes necessary and desirable to disseminate information pertaining to such violations to other law enforcement agencies which have jurisdiction over the offense to which the information relates. The Federal Emergency Management Agency should not be placed in a position of having to ignore information relating to violations of law not within its jurisdiction when that information comes to the attention of the Federal Emergency Management Agency through the conduct of a lawful FEMAs civil or criminal investigation or inquiry. The Federal Emergency Management Agency therefore believes that it is appropriate to exempt the above-listed systems of records from the provisions of 5 U.S.C. 552a(e)(1).

(c) *Exempt under 5 U.S.C. 552a(k)(5).* The Director, Federal Emergency Management Agency has determined that certain systems of records are exempt from the requirements of (c)(3) and (d) of 5 U.S.C. 552a.

(1) *Exempt systems.* The following systems of records, which contain information of the type described in 5 U.S.C. 552a(k)(5), shall be exempted from the provisions of 5 U.S.C. 552a listed in paragraph (c) of this section.

Claims (litigation) (FEMA/GC-1)—Limited Access
FEMA Enforcement (Compliance) (FEMA/GC-2)—Limited Access
General Investigative Files (FEMA/IG-2)—Limited Access
Security Management Information Systems (FEMA/SEC-1)—Limited Access

(2) *Reasons for exemptions.* All information about individuals in these records that meet the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosure available to the subject and access to and amendment of records. These exemptions are claimed because the system of records entitled, FEMA/SEC-1, Security Management Information System, contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for access to classified information or classified Federal contracts, but only to the extent that the disclosure would reveal the identity of a source who furnished information to the Government under an express promise or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. During the litigation process and investigations, it is possible that certain records from the system of records entitled, FEMA/SEC-1, Security Management System may be necessary and relevant to the litigation or investigation and included in these systems of records. To the extent that this occurs, the Director, FEMA, has determined that the records would also be exempted from subsections (c)(3) and (d) pursuant to 5 U.S.C. 552a(k)(5) to protect such records. A determination will be made at the time of the request for a record concerning whether specific information would reveal the identity of a source. This exemption is required in order to protect the confidentiality of the sources of information compiled for the purpose of determining access to classified information. This confidentiality helps maintain the Government's continued access to information from persons who would otherwise refuse to give it.

[45 FR 64580, Sept. 30, 1980, as amended at 47 FR 54816, Dec. 6, 1982; 52 FR 5114, Feb. 19, 1987]

PART 7—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS (FEMA REG. 5)

Sec.

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AUTHORITY: FEMA Reg. 5 issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000 d-1; 42 U.S.C. 1855-1885g; 50 U.S.C. 404.

SOURCE: 30 FR 321, Jan. 9, 1965, unless otherwise noted. Redesignated at 45 FR 44575, July 1, 1980.

§ 7.1 Purpose.

The purpose of this regulation is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 (hereafter referred to as the "Act") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Federal Emergency Management Agency.

§ 7.2 Definitions.

As used in this regulation:

(a) The term "responsible agency official" with respect to any program receiving Federal financial assistance means the Director of the Federal Emergency Management Agency or other official of the agency who by law or by delegation has the principal responsibility within the agency for the administration of the law extending such assistance.

(b) The term "United States" means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term "State" means any one of the foregoing.

(c) The term "Federal financial assistance" includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) The term "program" includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (including education or training, health, welfare, rehabilitation, housing, or other services, whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), or for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(e) The term "facility" includes all or any portion of structure, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(f) The term "recipient" means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(g) The term "primary recipient" means any recipient which is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program.

(h) The term "applicant" means one who submits an application, request, or plan required to be approved by a responsible agency official, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and the term "application" means such an application, request, or plan.

§ 7.3 Application of this regulation.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination by those receiving assistance under the "Federal Disaster Assistance" program (Pub. L. 81-875; 42 U.S.C. 1855-1855g), or under the "Interim Emergency Management of Resources" program (section 103 of the National Security Act of 1947; Pub. L. 80-253, as amended; 50 U.S.C. 404).

§ 7.4 Further application of this regulation.

This regulation applies to any program for which Federal financial assistance is authorized under a law administered by the Federal Emergency Management Agency. It applies to money paid, property transferred, or other Federal financial assistance extended under any such program after the effective date of the regulation pursuant to an application approved prior to such effective date. This regulation does not apply to (a) any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended under any such program before the effective date of this regulation, (c) any assistance to any individual who is the ultimate beneficiary under any such program, or (d) any employment practice, under such program, of any employer, employment agency, or labor organization.

(Reorganization Plan No. 3 of 1978, E.O. 12127 and E.O. 12148)

[30 FR 321, Jan. 9, 1965. Redesignated at 45 FR 44575, July 1, 1980, and amended at 48 FR 44543, Sept. 29, 1983]

§ 7.5 Specific discriminatory actions prohibited.

(a) A recipient under any program to which this regulation applies may not, directly or through contractual or other arrangements, on ground of race, color, or national origin:

(1) Deny any individual any service, financial aid, or other benefit provided under the program;

(2) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

(b) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.

(c) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(d) The enumeration of specific forms of prohibited discrimination in this section does not limit the generality of the prohibition in section 4.

§ 7.6 Life, health, and safety.

Notwithstanding the provisions of section 5, a recipient of Federal financial assistance shall not be deemed to have failed to comply with section 3, if immediate provision of a service or other benefit to an individual is necessary to prevent his death or serious impairment of his health or safety.

§ 7.7 Assurances required.

Every application for Federal financial assistance to carry out a program to which this regulation applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this regulation. In the case of an application for Federal financial assistance to provide real property or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case of personal property the assurance shall obligate the recipient for the period during which he retains ownership or possession of the property. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The responsible agency official shall specify the form of the foregoing assurances for each program, and the extent to which like assurances will be required of subgrantee, contractors and subcontractors, transferees, successors in interest, and other participants in the program. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

§ 7.8 Elementary and secondary schools.

The requirements of section 7 with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (a) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (b) submits a plan for the desegregation of such school or school system which the United States Commissioner of Education determines is adequate to accomplish the purpose of the Act and this regulation, and provides reasonable assurance that it will carry out such plans; in any case of continuing Federal financial assistance the responsible agency official may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this regulation. In any case to which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

§ 7.9 Assurances from institutions.

(a) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by section 7 shall extend to admission practices and to all other practices relating to the treatment of students.

(b) The assurances required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institutions or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the Director of the Federal Emergency Management Agency that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

§ 7.10 Compliance information.

(a) *Cooperation and assistance.* The responsible official in the Federal Emergency Management Agency shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this regulation and shall provide assistance and guidance to recipients to help them comply voluntarily with this regulation.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible agency official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible agency official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this regulation. In the case of any program under which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this regulation.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible agency official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this regulation. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible agency official finds necessary to apprise such persons of the protection against discrimination assured them by the Act and this regulation.

§ 7.11 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible agency official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this regulation.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this regulation may by himself or by a representative file with the National Headquarters or any Regional Office of the Federal Emergency Management Agency a written complaint. A complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible agency official or his designee.

(c) *Investigations.* The responsible agency official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this regulation. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this regulation occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this regulation.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this regulation, the responsible agency official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in section 12.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible agency official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this regulation, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this regulation. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this regulation, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

§ 7.12 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this regulation may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under state or local law.

(b) *Noncompliance with section 7.* If an applicant fails or refuses to furnish an assurance required under section 7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The agency shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the agency shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application thereof approved prior to the effective date of this regulation.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible agency official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this regulation, (3) the action has been approved by the Director of the Federal Emergency Management Agency pursuant to section 14, and (4) the expiration of 30 days after the Director has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible agency official has determined that compliance cannot be secured by voluntary means, (2) the action has been approved by the Director of the Federal Emergency Management Agency, (3) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (4) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

§ 7.13 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by section 12(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible agency official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and section 12(c) of this regulation and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the National Headquarters of the Federal Emergency Management Agency in Washington, D.C., at a time fixed by the responsible agency official unless he determines that the convenience of the applicant or recipient or of the agency requires that another place be selected. Hearings shall be held before the responsible agency official or, at his discretion, before a hearing examiner designated in accordance with section 11 of the Administrative Procedure Act.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the agency shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 5–8 of the Administrative Procedure Act, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the agency and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to this regulation, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with this regulation with respect to two or more programs to which this regulation applies, or noncompliance with this regulation and the regulations of one or more other Federal departments or agencies issued under Title VI of the Act, the Director of the Federal Emergency Management Agency may, by agreement with such other departments or agencies where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedures not inconsistent with this regulation. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with section 14.

§ 7.14 Decisions and notices.

(a) *Decision by person other than the responsible agency official.* If the hearing is held by a hearing examiner such hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the responsible agency official for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the responsible agency official his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the responsible agency official may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the responsible agency official shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the responsible agency official.

(b) *Decisions on record or review by the responsible agency official.* Whenever a record is certified to the responsible agency official for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever he conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of his final decision shall be given in writing to the applicant or recipient and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to section 13(a) a decision shall be made by the responsible agency official on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer or responsible agency official shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this regulation with which it is found that the applicant or recipient has failed to comply.

(e) *Approval by Director.* Any final decision of a responsible agency official (other than the Director of the agency) which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this regulation or the Act, shall promptly be transmitted to the Director of the Federal Emergency Management Agency who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and this regulation, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this regulation, or to have otherwise failed to comply with this regulation, unless and until it corrects its noncompliance and satisfies the Director of the Federal Emergency Management Agency that it will fully comply with this regulation.

§7.15 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§7.16 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Federal Emergency Management Agency which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which this regulation applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance under such program for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this regulation, except that nothing in this regulation shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of this regulation. Nothing in this regulation, however, shall be deemed to supersede Executive Orders 10925 and 11114 (including future amendments thereof) and regulations issued thereunder, or any other regulations or instructions, insofar as such regulations or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this regulation is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each responsible agency official shall issue and promptly make available to interested persons forms and detailed instructions and procedures for effectuating this regulation as applied to programs to which this regulation applies and for which he is responsible.

(c) *Supervision and coordination.* The Director of the Federal Emergency Management Agency may from time to time assign to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of Title VI of the Act and this regulation (other than responsibility for final decision as provided in section 14), including the achievement of effective coordination and maximum uniformity within the agency and within the Executive Branch of the Government in the application of Title VI and this regulation to similar programs and in similar situations.

PART 8—NATIONAL SECURITY INFORMATION

Sec.
8.1 Purpose.
8.2 Original classification authority.
8.3 Senior FEMA official responsible for the information security program.
8.4 Mandatory declassification review procedures.

AUTHORITY: Reorganization Plan No. 3 of 1978, Executive Orders 12148 and 12356.

§ 8.1 Purpose.

(a) Section 5.3(b) of Executive Order (EO) 12356, "National Security Information" requires agencies to promulgate implementing policies and regulations. To the extent that these regulations affect members of the public, these policies are to be published in the FEDERAL REGISTER.

(b) This regulation provides public notification of the FEMA procedures for processing requests for the mandatory review of classified information pursuant to section 3.4(d) of E.O. 12356.

[49 FR 24518, June 14, 1984, as amended at 49 FR 38119, Sept. 27, 1984; 50 FR 40006, Oct. 1, 1985]

§ 8.2 Original classification authority.

(a) The Director, Federal Emergency Management Agency (FEMA), has the authority to classify information originally as TOP SECRET, as designated by the President in the FEDERAL REGISTER, Vol 47, No. 91, May 11, 1982, in accordance with section 1.2(a)(2), E.O. 12356.

(b) In accordance with section 1.2(d)(2), E.O. 12356, the following positions have been delegated ORIGINAL TOP SECRET CLASSIFICATION AUTHORITY by the Director, FEMA:

(1) DEPUTY DIRECTOR, FEMA

(2) ASSOCIATE DIRECTOR, EMERGENCY OPERATIONS DIRECTORATE, FEMA

(3) DIRECTOR, OFFICE OF SECURITY

(c) In accordance with § 1.2(d)(3), Executive Order 12356, the following positions have been delegated ORIGINAL SECRET CLASSIFICATION AUTHORITY by the Director, FEMA:

(1) Chief of Staff.

(2) Associate Director, State and Local Program Directorate.

(3) Associate Director, National Preparedness Programs Directorate.

(4) Regional Directors.

(d) The positions delegated ORIGINAL TOP SECRET CLASSIFICATION AUTHORITY in paragraph (b) of this section, are also delegated ORIGINAL SECRET and CONFIDENTIAL CLASSIFICATION AUTHORITY by virtue of this delegation. The positions delegated ORIGINAL SECRET CLASSIFICATION AUTHORITY in paragraph (c) of this section, are also delegated ORIGINAL CONFIDENTIAL CLASSIFICATION AUTHORITY by virtue of this delegation. Any further delegation of original classification authority, for any classification level, will be accomplished only by the Director of FEMA.

[49 FR 24518, June 14, 1984 as amended at 51 FR 34605, Sept. 30, 1986]

§ 8.3 Senior FEMA official responsible for the information security program.

The Director of Security, FEMA, has been designated as the senior official to direct and administer the FEMA information security program, in accordance with section 5.3(a), E.O. 12356.

[49 FR 24518, June 14, 1984]

§ 8.4 Mandatory declassification review procedures.

(a) All information classified by FEMA under E.O. 12356 or predecessor orders shall be subject to a review for declassification if such a review is requested by a United States citizen or permanent resident alien, a Federal agency or a State or local government.

(b) Requests for declassification review shall be submitted to the Office of Security, Federal Emergency Management Agency, Washington, DC 20472. All requests shall be in writing and reasonably describe the information sought with sufficient clarity to enable the appropriate FEMA component to identify the information sought. Any requests that do not sufficiently identify the information sought shall be returned to the requestor and he or she shall be asked to clarify the request and/or provide additional information.

(c) If within 30 days the requestor does not respond to the agency's request for clarification or additional information, the FEMA Office of Security shall notify the requestor that no further action can be taken on the request. If the requestor's response to the agency's request for clarification and/or additional information is inadequate, the Office of Security shall notify him or her that no further action will be taken until such time as the agency is provided with adequate information concerning the request. In addition, the agency's response will set forth the agency's explanation of the deficiencies of the request.

(d) Once a request meets the foregoing requirements for processing, it will be acted upon as follows:

(1) Receipt of all requests shall be acknowledged within ten (10) working days.

(2) FEMA action upon a request shall be completed within sixty (60) calendar days.

(e) The Director of Security shall designate a FEMA component to conduct the declassification review. This will normally be the originating component. The designated program or staff office shall conduct the review and forward its recommendation(s) to the Office of Security. Information no longer requiring protection under E.O. 12356 shall be declassified and released unless withholding is otherwise authorized under applicable law. When information cannot be declassified in its entirety, FEMA will make a reasonable effort to release those declassified portions of the requested information that constitute a coherent segment. If the information may not be released in whole or part, the requestor shall be given a brief statement as to the reason for the denial, a notice of the right to appeal the determination to the Director of FEMA and a notice that such an appeal must be filed within sixty (60) calendar days to be considered.

(f) If the request requires the rendering of services for which fees may be charged under 31 U.S.C. 9701, such fees may be imposed in accordance with the provisions of 44 CFR Part 5, Subpart C.

(g) The following procedures shall be followed when denials of requests for declassification are appealed:

(1) The Director shall, within fifteen (15) working days of receipt of the appeal, convene a meeting of the FEMA Information Security Oversight Committee (ISOC). Representation on the FEMA ISOC shall include the Director of Security or his/her representative, a representative of the component that denied the original request, a representative from the Office of General Counsel, a representative from the Office of External Affairs and the Chief of Staff or his/her representative.

(2) If the ISOC upholds the appeal in its entirety, the information will be released in accordance with the provisions of paragraph (e) of this section.

(3) If the ISOC denies the appeal, in part or in its entirety, then it will forward the appeal with its recommendation(s) to the Director of FEMA, for a final determination. A reply will be forwarded to the requestor enclosing the declassified releasable information if any, and an explanation for denying the request in whole or in part.

(4) Final action on appeals shall be completed within thirty (30) working days of receipt of appeal.

[49 FR 24518, June 14, 1984, as amended at 49 FR 38119, Sept. 27, 1984; 50 FR 40006, Oct. 1, 1985; 51 FR 34605, Sept. 30, 1986]

PART 9—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

Sec.
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APPENDIX A—DECISION-MAKING PROCESS FOR E.O. 11988

AUTHORITY: E.O. 11988; E.O. 11990; Reog. Plan No. 3 of 1978; E.O. 12127; E.O. 12148; 42 U.S.C. 5201.

SOURCE: 45 FR 59526, Sept. 9, 1980, unless otherwise noted.

§ 9.1 Purpose of part.

This regulation sets forth the policy, procedure and responsibilities to implement and enforce Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands.

§ 9.2 Policy.

(a) FEMA shall take no action unless and until the requirements of this regulation are complied with.

(b) It is the policy of the Agency to provide leadership in floodplain management and the protection of wetlands. Further, the Agency shall integrate the goals of the Orders to the greatest possible degree into its procedures for implementing NEPA. The Agency shall take action to:

(1) Avoid long- and short-term adverse impacts associated with the occupancy and modification of floodplains and the destruction and modification of wetlands;

(2) Avoid direct and indirect support of floodplain development and new construction in wetlands wherever there is a practicable alternative;

(3) Reduce the risk of flood loss;

(4) Promote the use of nonstructural flood protection methods to reduce the risk of flood loss;

(5) Minimize the impact of floods on human health, safety and welfare;

(6) Minimize the destruction, loss or degradation of wetlands;

(7) Restore and preserve the natural and beneficial values served by floodplains;

(8) Preserve and enhance the natural values of wetlands;

(9) Involve the public throughout the floodplain management and wetlands protection decision-making process;

(10) Adhere to the objectives of the Unified National Program for Floodplain Management; and

(11) Improve and coordinate the Agency's plans, programs, functions and resources so that the Nation may attain the widest range of beneficial uses of the environment without degradation or risk to health and safety.

§ 9.3 Authority.

The authority for these regulations is (a) Executive Order 11988, May 24, 1977, which replaced Executive Order 11296, August 10, 1966, (b) Executive Order 11990, May 24, 1977, (c) Reorganization Plan No. 3 of 1978 (43 FR 41943); and (d) Executive Order 12127, April 1, 1979 (44 FR 1936). E.O. 11988 was issued in furtherance of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-488); the Flood Disaster Protection Act of 1973, as amended (Pub. L. 93-234); and the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91-190). Section 2(d) of Executive Order 11988 requires issuance of new or amended regulations and procedures to satisfy its substantive and procedural provisions. E.O. 11990 was issued in furtherance of NEPA, and at section 6 required issuance of new or amended regulations and procedures to satisfy its substantive and procedural provisions.

[45 FR 59526, Sept. 9, 1980, as amended at 48 FR 44543, Sept. 29, 1983]

§ 9.4 Definitions.

The following definitions shall apply throughout this regulation.

Action means any action or activity including: (a) Acquiring, managing and disposing of Federal lands and facilities; (b) providing federally undertaken, financed or assisted construction and improvements; and (c) conducting Federal activities and programs affecting land use, including, but not limited to, water and related land resources, planning, regulating and licensing activities.

Actions Affecting or Affected by Floodplains or Wetlands means actions which have the potential to result in the long- or short-term impacts associated with (a) the occupancy or modification of floodplains, and the direct or indirect support of floodplain development, or (b) the destruction and modification of wetlands and the direct or indirect support of new construction in wetlands.

Agency means the Federal Emergency Management Agency (FEMA).

Agency Assistance means grants for projects or planning activities, loans, and all other forms of financial or technical assistance provided by the Agency.

Associate Director means the head of any Office or Administration of the Federal Emergency Management Agency, who has programmatic responsibility for a particular action.

Base Flood means the flood which has a one percent chance of being equalled or exceeded in any given year (also known as a 100-year flood). This term is used in the National Flood Insurance Program (NFIP) to indicate the minimum level of flooding to be used by a community in its floodplain management regulations.

Base Floodplain means the 100-year floodplain (one percent chance floodplain).

Coastal High Hazard Area means the areas subject to high velocity waters including but not limited to hurricane wave wash or tsunamis. On a Flood Insurance Rate Map (FIRM), this appears as zone V1–30, VE or V.

Critical Action means an action for which even a slight chance of flooding is too great. The minimum floodplain of concern for critical actions is the 500-year floodplain, i.e., critical action floodplain. Critical actions include, but are not limited to, those which create or extend the useful life of structures or facilities:

(a) Such as those which produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(b) Such as hospitals and nursing homes, and housing for the elderly, which are likely to contain occupants who may not be sufficiently mobile to avoid the loss of life or injury during flood and storm events;

(c) Such as emergency operation centers, or data storage centers which contain records or services that may become lost or inoperative during flood and storm events; and

(d) Such as generating plants, and other principal points of utility lines.

Direct Impacts means changes in floodplain or wetland values and functions and changes in the risk to lives and property caused or induced by an action or related activity. Impacts are caused whenever these natural values and functions are affected as a direct result of an action. An action which would result in the discharge of polluted storm waters into a floodplain or wetland, for example, would directly affect their natural values and functions. Construction-related activities, such as dredging and filling operations within the floodplain or a wetland would be another example of impacts caused by an action.

Director means the Director of the Federal Emergency Management Agency (FEMA).

Emergency Actions means emergency work essential to save lives and protect property and public health and safety performed under sections 305 and 306 of the Disaster Relief Act of 1974 (42 U.S.C. 5145 and 5146). See 44 CFR Part 205, Subpart E.

Enhance means to increase, heighten, or improve the natural and beneficial values associated with wetlands.

Facility means any man-made or man-placed item other than a structure.

FEMA means the Federal Emergency Management Agency.

FIA means the Federal Insurance Administration.

Five Hundred Year Floodplain (the 500-year floodplain or 0.2 percent change floodplain) means that area, including the base floodplain, which is subject to inundation from a flood having a 0.2 percent chance of being equalled or exceeded in any given year.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland and/or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

Flood Fringe means that portion of the floodplain outside of the floodway (often referred to as "floodway fringe").

Flood Hazard Boundary Map (FHBM) means an offical map of a community, issued by the Director, where the boundaries of the flood, mudslide (i.e., mudflow) and related erosion areas having special hazards have been designated as Zone A, M, or E.

Flood Insurance Rate Map (FIRM) means an official map of a community on which the Director has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters including, at a minimum, that area subject to a one percent or greater chance of flooding in any given year. Wherever in this regulation the term "floodplain" is used, if a critical action is involved, "floodplain" shall mean the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year (500-year floodplain). "Floodplain" does not include areas subject only to mudflow until FIA adopts maps identifying "M" Zones.

Floodproofing means the modification of individual structures and facilities, their sites, and their contents to protect against structural failure, to keep water out, or to reduce effects of water entry.

Floodway means that portion of the floodplain which is effective in carrying flow, within which this carrying capacity must be preserved and where the flood hazard is generally highest, i.e., where water depths and velocities are the greatest. It is that area which provides for the discharge of the base flood so the cumulative increase in water surface elevation is no more than one foot.

Functionally Dependent Use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, (e.g., bridges, and piers).

Indirect Impacts means an indirect result of an action whenever the action induces or makes possible related activities which effect the natural values and functions of floodplains or wetlands or the risk to lives and property. Such impacts occur whenever these values and functions are potentially affected, either in the short- or long-term, as a result of undertaking an action.

Minimize means to reduce to the smallest amount or degree possible.

Mitigation means all steps necessary to minimize the potentially adverse effects of the proposed action, and to restore and preserve the natural and beneficial floodplain values and to preserve and enhance natural values of wetlands.

Natural Values of Floodplains and Wetlands means the qualities of or functions served by floodplains and wetlands which include but are not limited to: (a) Water resource values (natural moderation of floods, water quality maintenance, groundwater recharge); (b) living resource values (fish, wildlife, plant resources and habitats); (c) cultural resource values (open space, natural beauty, scientific study, outdoor education, archeological and historic sites, recreation); and (d) cultivated resource values (agriculture, aquaculture, forestry).

New Construction means the construction of a new structure (including the placement of a mobile home) or facility or the replacement of a structure or facility which has been totally destroyed.

New Construction in Wetlands includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective dates of the Orders, May 24, 1977.

Orders means Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

Practicable means capable of being done within existing constraints. The test of what is practicable depends upon the situation and includes consideration of all pertinent factors, such as environment, cost and technology.

Preserve means to prevent alterations to natural conditions and to maintain the values and functions which operate the floodplains or wetlands in their natural states.

Regional Director means the Regional Director of the Federal Emergency Management Agency for the Region in which FEMA is acting or the Disaster Recovery Manager when one is designated.

Regulatory Floodway means the area regulated by federal, State or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program).

Restore means to reestablish a setting or environment in which the natural functions of the floodplain can again operate.

SLPS means the State and Local Programs and Support Directorate.

Structures means walled or roofed buildings, including mobile homes and gas or liquid storage tanks.

Substantial Improvement means any repair, reconstruction or other improvement of a structure or facility, which has been damaged in excess of, or the cost of which equals or exceeds, 50% of the market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Disaster Relief Act of 1974) (a) before the repair or improvement is started, or (b) if the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is an essential link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of the portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

Support means to encourage, allow, serve or otherwise facilitate floodplain or wetland development. Direct support results from actions within a floodplain or wetland, and indirect support results from actions outside of floodplains or wetlands.

Wetlands means those areas which are inundated or saturated by surface or ground water with a frequency sufficient to support, or that under normal hydrologic conditions does or would support, a prevalence of vegetation or aquatic life typically adapted for life in saturated or seasonally saturated soil conditions. Examples of wetlands include, but are not limited to, swamps, fresh and salt water marshes, estuaries, bogs, beaches, wet meadows, sloughs, potholes, mud flats, river overflows and other similar areas. This definition includes those wetlands areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition is intended to be consistent with the definition utilized by the U.S. Fish and Wildlife Service in the publication entitled *Classification of Wetlands and Deep Water Habitats of the United States* (Cowardin, et al., 1977).

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 50 FR 40006, Oct. 1, 1985]

§ 9.5 Scope.

(a) *Applicability.* (1) These regulations apply to all Agency actions which have the potential to affect floodplains or wetlands or their occupants, or which are subject to potential harm by location in floodplains or wetlands.

(2) The basic test of the potential of an action to affect floodplains or wetlands is the action's potential (both by itself and when viewed cumulatively with other proposed actions) to result in the long- or short-term adverse impacts associated with:

(i) The occupancy or modification of floodplains, and the direct and indirect support of floodplain development; or

(ii) The destruction or modification of wetlands and the direct or indirect support of new construction in wetlands.

(3) This regulation applies to actions that were, on the effective date of the Orders (May 24, 1977), ongoing, in the planning and/or development stages, or undergoing implementation, and are incomplete as of the effective date of these regulations. The regulation also applies to proposed (new) actions. The Agency shall:

(i) Determine the applicable provisions of the Orders by analyzing whether the action in question has progressed beyond critical stages in the floodplain management and wetlands protection decision-making process, as set out below in § 9.6. This determination need only be made at the time that followup actions are being taken to complete or implement the action in question; and

(ii) Apply the provisions of the Orders and of this regulation to all such actions to the fullest extent practicable.

(b) *Limited exemption of ongoing actions involving wetlands located outside the floodplains.* (1) Executive Order 11990, Protection of Wetlands, contains a limited exemption not found in Executive Order 11988, Floodplain Management. Therefore, this exemption applies only to actions affecting wetlands which are located outside the floodplains, and which have no potential to result in harm to or within floodplains or to support floodplain development.

(2) The following proposed actions that impact wetlands located outside of floodplains are exempt from this regulation:

(i) Agency-assisted or permitted projects which were under construction before May 24, 1977; and

(ii) Projects for which the Agency has proposed a draft of a final environmental impact statement (EIS) which adequately analyzes the action and which was filed before October 1, 1977. Proposed actions that impact wetlands outside of floodplains are not exempt if the EIS:

(A) Only generally covers the proposed action;

(B) Is devoted largely to related activities; or

(C) Treats the project area or program without an adequate and specific analysis of the floodplain and wetland implications of the proposed action.

(c) *Decision-making involving certain categories of actions.* The provisions set forth in this regulation are *not applicable* to the actions enumerated below except that the Regional Directors shall comply with the spirit of the Order to the extent practicable. For any action which is excluded from the actions enumerated below, the full 8-step process applies (see § 9.6) (except as indicated at paragraphs (d), (f) and (g) of this section regarding other categories of partial or total exclusions). The provisions of these regulations do not apply to the following (all references are to the Disaster Relief Act of 1974, Pub. L. 93-288, as amended, except as noted):

(1) Assistance provided for emergency work essential to save lives and protect property and public health and safety performed pursuant to sections 305 and 306;

(2) Emergency Support Teams (section 304);

(3) Unemployment Assistance (section 407);

(4) Emergency Communications (section 415);

(5) Emergency Public Transportation (section 416);

(6) Fire Suppression Assistance (section 417);

(7) Community Disaster Loans (section 414), except to the extent that the proceeds of the loan will be used for repair of facilities or structures or for construction of additional facilities or structures;

(8) The following Individual and Family Grant Program (section 408) actions:

(i) Housing needs or expenses, except for restoring, repairing or building private bridges, purchase of mobile homes and provision of structures as minimum protective measures;

(ii) Personal property needs or expenses;

(iii) Transportation expenses;

(iv) Medical/dental expenses;

(v) Funeral expenses;

(vi) Limited home repairs;

(vii) Flood insurance premium;

(viii) Cost estimates;

(ix) Food expenses; and

(x) Temporary rental accommodations.

(9) Mortgage and rental assistance under section 404(b);

(10) Use of existing resources in the temporary housing assistance program [section 404(a)], except that Step 1 (§ 9.7) shall be carried out;

(11) Minimal home repairs [section 404(c)];

(12) Debris removal (section 403), except those grants involving non-

emergency disposal of debris within a floodplain or wetland;

(13) Repairs or replacements under section 402, of less than $5,000 to damaged structures or facilities.

(14) Placement of families in existing resources and Temporary Relocation Assistance provided to those families so placed under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96–510.

(d) For each action enumerated below, the Regional Director *shall apply steps 1, 2, 4, 5 and 8* of the decision-making process (§§ 9.7, 9.8, 9.10 and 9.11, see § 9.6). Steps 3 and 6 (§ 9.9) shall be carried out except that alternative sites outside the floodplain or wetland need not be considered. After assessing impacts of the proposed action on the floodplain or wetlands and of the site on the proposed action, alternative actions to the proposed action, if any, and the "no action" alternative shall be considered. The Regional Director may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. For any action which is excluded from the actions listed below. (except as indicated in paragraphs (c), (f) and (g) of this section regarding other categories of partial or total exclusion), the full 8-step process applies (see § 9.6). The references are to the Disaster Relief Act of 1974, Pub. L. 93–288, as amended.

(1) Actions performed under the Individual and Family Grant Program (section 408) for restoring or repairing a private bridge, except where two or more individuals or families are authorized to pool their grants for this purpose.

(2) Small project grants (section 419), except to the extent that federal funding involved is used for construction of new facilities or structures.

(3) Replacement of building contents, materials and equipment. (sections 402 and 419).

(4) Repairs under section 402 to damaged facilities or structures, except any such action for which one or more of the following is applicable:

(i) FEMA estimated cost of repairs is more than 50% of the estimated reconstruction cost of the entire facility or structure, or is more than $100,000, or

(ii) The action is located in a floodway or coastal high hazard area, or

(iii) The facility or structure is one which has previously sustained structural damage from flooding due to a major disaster or emergency or on which a flood insurance claim has been paid, or

(iv) The action is a critical action.

(e) *Other categories of actions.* Based upon the completion of the 8-step decision-making process (§ 9.6), the Director may find that a specific category of actions either offers no potential for carrying out the purposes of the Orders and shall be treated as those actions listed in § 9.5(c), or has no practicable alternative sites and shall be treated as those actions listed in § 9.5(d), or has no practicable alternative actions or sites and shall be treated as those actions listed in § 9.5(g). This finding will be made in consultation with the Federal Insurance Administration and the Council on Environmental Quality as provided in section 2(d) of E.O. 11988. Public notice of each of these determinations shall include publication in the FEDERAL REGISTER and a 30-day comment period.

(f) *The National Flood Insurance Program (NFIP).* (1) Most of what is done by FIA or SLPS, in adminstering the National Flood Insurance Program is performed on a program-wide basis. For all regulations, procedures or other issuances making or amending program policy, FIA or SLPS, shall apply the 8-step decision-making process to that program-wide action. The action to which the 8-step process must be applied is the establishment of programmatic standards or criteria, not the application of programmatic standards or criteria to specific situations. Thus, for example, FIA or SLPS, would apply the 8-step process to a programmatic determination of categories of structures to be insured, but not to whether to insure each individual structure. The two prime examples of where FIA or SLPS, does take site specific actions which would require individual application of the 8-step process are property acquisition under section 1362 of the National

Flood Insurance Act of 1968, as amended, and the issuance of an exception to a community under 44 CFR 60.6(b). (See also § 9.9(e)(6) and § 9.11(e).)

(2) The provisions set forth in this regulation are not applicable to the actions enumerated below except that the Federal Insurance Administrator or the Associate Director, SLPS, as appropriate shall comply with the spirit of the Orders to the extent practicable:

(i) The issuance of individual flood insurance policies and policy interpretations;

(ii) The adjustment of claims made under the Standard Flood Insurance Policy;

(iii) The hiring of independent contractors to assist in the implementation of the National Flood Insurance Program;

(iv) The issuance of individual flood insurance maps, Map Information Facility map determinations, and map amendments; and

(v) The conferring of eligibility for emergency or regular program (NFIP) benefits upon communities.

(g) For the action listed below, the Regional Director *shall apply steps 1, 4, 5 and 8* of the decision-making process (§§ 9.7, 9.10 and 9.11). For any action which is excluded from the actions listed below, (except as indicated in paragraphs (c), (d) and (f) of this section regarding other categories of partial or total exclusion), the full 8-step process applies (See § 9.6). The Regional Director may also require certain other portions of the decision-making process to be carried out for individual actions as is deemed necessary. The references are to the Disaster Relief Act of 1974, Pub. L. 93-288. The above requirements apply to repairs, under section 402, between $5,000 and $25,000 to damaged structures of facilities except for:

(1) Actions in a floodway or coastal high hazard area; or

(2) New or substantially improved structures or facilities; or

(3) Facilities or structures which have previously sustained structural damage from flooding due to a major disaster or emergency.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 35583, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985; 51 FR 39531, Oct. 29, 1986]

§ 9.6 Decision-making process.

(a) *Purpose.* The purpose of this section is to set out the floodplain management and wetlands protection decision-making process to be followed by the Agency in applying the Orders to its actions. While the decision-making process was initially designed to address the floodplain Order's requirements, the process will also satisfy the wetlands Order's provisions due to the close similarity of the two directives. The numbering of Steps 1 through 8 does not firmly require that the steps be followed sequentially. As information is gathered throughout the decision-making process and as additional information is needed, reevaluation of lower numbered steps may be necessary.

(b) Except as otherwise provided in § 9.5 (c), (d), (f), and (g) regarding categories of partial or total exclusion when proposing an action, the Agency shall apply the 8-step decision-making process. FEMA shall:

Step 1. Determine whether the proposed action is located in a wetland and/or the 100-year floodplain (500-year floodplain for critical actions); and whether it has the potential to affect or be affected by a floodplain or wetland (see § 9.7);

Step 2. Notify the public at the earliest possible time of the intent to carry out an action in a floodplain or wetland, and involve the affected and interested public in the decision-making process (see § 9.8);

Step 3. Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland (including alternative sites, actions and the "no action" option) (see § 9.9). If a practicable alternative exists outside the floodplain or wetland FEMA must locate the action at the alternative site.

Step 4. Identify the potential direct and indirect impacts associated with the occupancy or modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action (see § 9.10);

Step 5. Minimize the potential adverse impacts and support to or within floodplains and wetlands to be identified under Step 4, restore and preserve the natural and beneficial values served by floodplains, and preserve and enhance the natural and beneficial values served by wetlands (see § 9.11);

Step 6. Reevaluate the proposed action to determine first, if it is still practicable in light of its exposure to flood hazards, the extent to which it will aggravate the hazards to others, and its potential to disrupt floodplain and wetland values and second, if alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5. FEMA shall not act in a floodplain or wetland unless it is the only practicable location (see § 9.9);

Step 7. Prepare and provide the public with a finding and public explanation of any final decision that the floodplain or wetland is the only practicable alternative (see § 9.12); and

Step 8. Review the implementation and post-implementation phases of the proposed action to ensure that the requirements stated in § 9.11 are fully implemented. Oversight responsibility shall be integrated into existing processes.

[45 FR 59526, Sept. 9, 1980, as amended at 49 FR 35583, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985]

§ 9.7 Determination of proposed action's location.

(a) The purpose of this section is to establish Agency procedures for determining whether any action as proposed is located in or affects (1) the base floodplain (the Agency shall substitute the 500-year floodplain for the base floodplain where the action being proposed involves a critical action), or (2) a wetland.

(b) *Information needed.* The Agency shall obtain enough information so that it can fulfill the requirements of the Orders to (1) avoid floodplain and wetland locations unless they are the only practicable alternatives; and (2) minimize harm to and within floodplains and wetlands. In all cases, FEMA shall determine whether the proposed action is located in a floodplain or wetland. In the absence of a finding to the contrary, FEMA may assume that a proposed action involving a facility or structure that has been flooded is in the floodplain. Information about the 100-year and 500-year floods and location of floodways and coastal high hazard areas may also be needed to comply with these regulations, especially § 9.11. The following additional flooding characteristics shall be identified by the Regional Director as appropriate:

(i) Velocity of floodwater;

(ii) Rate of rise of floodwater;

(iii) Duration of flooding;

(iv) Available warning and evacuation time and routes;

(v) Special problems:

(A) Levees;

(B) Erosion;

(C) Subsidence;

(D) Sink holes;

(E) Ice jams;

(F) Debris load;

(G) Pollutants;

(H) Wave heights;

(I) Groundwater flooding;

(J) Mudflow.

(c) *Floodplain determination.* (1) In the search for flood hazard information, FEMA shall follow the sequence below:

(i) The Regional Director shall consult the FEMA Flood Insurance Rate Map (FIRM) the Flood Boundary Floodway Map (FBFM) and the Flood Insurance Study (FIS).

(ii) If a detailed map (FIRM or FBFM) is not available, the Regional Director shall consult an FEMA Flood Hazard Boundary Map (FHBM) . If data on flood elevations, floodways, or coastal high hazard areas are needed, or if the map does not delineate the flood hazard boundaries in the vicinity of the proposed site, the Regional Director shall seek the necessary detailed information and assistance from the sources listed below.

SOURCES OF MAPS AND TECHNICAL INFORMATION

Department of Agriculture: Soil Conservation Service

Department of the Army: Corps of Engineers

Department of Commerce: National Oceanic and Atmospheric Administration
Federal Insurance Administration
FEMA Regional Offices/Natural and Technological Hazards Division
Department of the Interior:
 Geological Survey
 Bureau of Land Management
 Bureau of Reclamation
Tennessee Valley Authority
Delaware River Basin Commission
Susquehanna River Basin Commission
States

(iii) If the sources listed do not have or know of the information necessary to comply with the Orders' requirements, the Regional Director shall seek the services of a Federal or other engineer experienced in this type of work.

(2) If a decision involves an area or location within extensive Federal or state holdings or a headwater area, and an FIS, FIRM, FBFM, or FHBM is not available, the Regional Director shall seek information from the land administering agency before information and/or assistance is sought from the sources listed in this section. If none of these sources has information or can provide assistance, the services of an experienced Federal or other engineer shall be sought as described above.

(d) *Wetland determination.* The following sequence shall be followed by the Agency in making the wetland determination.

(1) The Agency shall consult with the U.S. Fish and Wildlife Service (FWS) for information concerning the location, scale and type of wetlands within the area which could be affected by the proposed action.

(2) If the FWS does not have adequate information upon which to base the determination, the Agency shall consult wetland inventories maintained by the Army Corps of Engineers, the Environmental Protection Agency, various states, communities and others.

(3) If state or other sources do not have adequate information upon which to base the determination, the Agency shall carry out an on-site analysis performed by a representative of the FWS or other qualified individual for wetlands characteristics based on the performance definition of what constitutes a wetland.

(4) If an action is in a wetland but not in a floodplain, and the action is new construction, the provisions of this regulation shall apply. Even if the action is not in a wetland, the Regional Director shall determine if the action has the potential to result in indirect impacts on wetlands. If so, all adverse impacts shall be minimized. For actions which are in a wetland and the floodplain, completion of the decision-making process is required. (See § 9.6.) In such a case the wetland will be considered as one of the natural and beneficial values of floodplain.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 33879, Aug. 27, 1984; 50 FR 40006, Oct. 1, 1985; 51 FR 34605, Sept. 30, 1986]

§ 9.8 Public notice requirements.

(a) *Purpose.* The purpose of this section is to establish the initial notice procedures to be followed when proposing any action in or affecting floodplains or wetlands.

(b) *General.* The Agency shall provide adequate information to enable the public to have impact on the decision outcome for all actions having potential to affect, adversely, or be affected by floodplains or wetlands that it proposes. To achieve this objective, the Agency shall:

(1) Provide the public with adequate information and opportunity for review and comment at the earliest possible time and throughout the decision-making process; and upon completion of this process, provide the public with an accounting of its final decisions (see § 9.12); and

(2) Rely on its environmental assessment processes, to the extent possible, as vehicles for public notice, involvement and explanation.

(c) *Early public notice.* The Agency shall provide opportunity for public involvement in the decision-making process through the provision of public notice upon determining that the proposed action can be expected to affect or be affected by floodplains or wetlands. Whenever possible, notice shall precede major project site identification and analysis in order to preclude the foreclosure of options consistent with the Orders.

(1) For an action for which an environmental impact statement is being prepared, the Notice of Intent to File an EIS is adequate to constitute the early public notice, if it includes the information required under paragraph (c)(5) of this section.

(2) For each action having national significance for which notice is being provided, the Agency shall use the FEDERAL REGISTER as the minimum means for notice, and shall provide notice by mail to national organizations reasonably expected to be interested in the action. The additional notices listed in paragraph (c)(4) of this section shall be used in accordance with the determination made under paragraph (c)(3) of this section.

(3) The Agency shall base its determination of appropriate notices, adequate comment periods, and whether to issue cumulative notices (paragraphs (c)(4), (6) and (7) of this section) on factors which include, but are not limited to:

(i) Scale of the action;

(ii) Potential for controversy;

(iii) Degree of public need;

(iv) Number of affected agencies and individuals; and

(v) Its anticipated potential impact.

(4) For each action having primarily local importance for which notice is being provided, notice shall be made in accordance with the criteria under paragraph (c)(3) of this section, and shall entail as appropriate:

(i) [Reserved]

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Information required in the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(x) Holding a public hearing.

(5) The notice shall include:

(i) A description of the action, its purpose and a statement of the intent to carry out an action affecting or affected by a floodplain or wetland;

(ii) Based on the factors in paragraph (c)(3) of this section, a map of the area or other indentification of the floodplain and/or wetland areas which is of adequate scale and detail so that the location is discernible; instead of publication of such map, FEMA may state that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information;

(iii) Based on the factors in paragraph (c)(3) of this section, a description of the type, extent and degree of hazard involved and the floodplain or wetland values present; and

(iv) Identification of the responsible official or organization for implementing the proposed action, and from whom further information can be obtained.

(6) The Agency shall provide for an adequate comment period.

(7) In a post-disaster situation in particular, the requirement for early public notice may be met in a cumulative manner based on the factors set out in paragraph (c)(3) of this section. Several actions may be addressed in one notice or series of notices. For some actions involving limited public interest a single notice in a local newspaper or letter to interested parties may suffice.

(d) *Continuing public notice.* The Agency shall keep the public informed of the progress of the decision-making process through additional public notices at key points in the process. The preliminary information provided under paragraph (c)(5) of this section shall be augmented by the findings of the adverse effects of the proposed actions and steps necessary to mitigate them. This responsibility shall be performed for actions requiring the preparation of an EIS, and all other actions having the potential for major adverse impacts, or the potential for harm to the health and safety of the general public.

[45 FR 59526, Sept. 9, 1980, as amended at 48 FR 29318, June 24, 1983]

§ 9.9 Analysis and reevaluation of practicable alternatives.

(a) *Purpose.* (1) The purpose of this section is to expand upon the directives set out in § 9.6, of this part, in order to clarify and emphasize the Orders' key requirements to avoid floodplains and wetlands unless there is no practicable alternative.

(2) Step 3 is a preliminary determination as to whether the floodplain is the only practicable location for the action. It is a preliminary determination because it comes early in the decision-making process when the Agency has a limited amount of information. If it is clear that there is a practicable alternative, or the floodplain or wetland is itself not a practicable location, FEMA shall then act on that basis. Provided that the location outside the floodplain or wetland does not indirectly impact floodplains or wetlands or support development therein (see § 9.10), the remaining analysis set out by this regulation is not required. If such location does indirectly impact floodplains or wetlands or support development therein, the remaining analysis set out by this regulation is required. If the preliminary determination is to act in the floodplain, FEMA shall gather the additional information required under Steps 4 and 5 and then reevaluate all the data to determine if the floodplain or wetland is the only practicable alternative.

(b) *Analysis of practicable alternatives.* The Agency shall identify and evaluate practicable alternatives to carrying out a proposed action in floodplains or wetlands, including:

(1) Alternative sites outside the floodplain or wetland;

(2) Alternative actions which serve essentially the same purpose as the proposed action, but which have less potential to affect or be affected by the floodplain or wetlands; and

(3) *No action.* The floodplain and wetland site itself must be a practicable location in light of the factors set out in this section.

(c) The Agency shall analyze the following factors in determining the practicability of the alternatives set out in paragraph (b) of this section:

(1) Natural environment (topography, habitat, hazards, etc.);

(2) Social concerns (aesthetics, historical and cultural values, land patterns, etc.);

(3) Economic aspects (costs of space, construction, services, and relocation); and

(4) Legal constraints (deeds, leases, etc.).

(d) *Action following the analysis of practicable alternatives.* (1) The Agency shall not locate the proposed action in the floodplain or in a wetland if a practicable alternative exists outside the floodplain or wetland.

(2) For critical actions, the Agency shall not locate the proposed action in the 500-year floodplain if a practicable alternative exists outside the 500-year floodplain.

(3) Even if no practicable alternative exists outside the floodplain or wetland, in order to carry out the action the floodplain or wetland must itself be a practicable location in light of the review required in this section.

(e) *Reevaluation of alternatives.* Upon determination of the impact of the proposed action to or within the floodplain or wetland and of what measures are necessary to comply with the requirement to minimize harm to and within floodplains and wetlands (§ 9.11), FEMA shall:

(1) Determine whether:

(i) The action is still practicable at a floodplain or wetland site in light of the exposure to flood risk and the ensuing disruption of natural values;

(ii) The floodplain or wetland site is the only practicable alternative;

(iii) There is a potential for limiting the action to increase the practicability of previously rejected non-floodplain or wetland sites and alternative actions; and

(iv) Minimization of harm to or within the floodplain can be achieved using all practicable means.

(2) Take no action in a floodplain unless the importance of the floodplain site clearly outweighs the requirement of E.O. 11988 to:

(i) Avoid direct or indirect support of floodplain development;

(ii) Reduce the risk of flood loss;

(iii) Minimize the impact of floods on human safety, health and welfare; and

(iv) Restore and preserve floodplain values.

(3) Take no action in a wetland unless the importance of the wetland site clearly outweighs the requirements of E.O. 11990 to:

(i) Avoid the destruction or modification of the wetlands;

(ii) Avoid direct or indirect support of new construction in wetlands;

(iii) Minimize the destruction, loss or degradation of wetlands; and

(iv) Preserve and enhance the natural and beneficial values of wetlands.

(4) In carrying out this balancing process, give the factors in paragraphs (e)(2) and (3) of this section, the great weight intended by the Orders.

(5) Choose the "no action" alternative where there are no practicable alternative actions or sites and where the floodplain or wetland is not itself a practicable alternative. In making the assessment of whether a floodplain or wetland location is itself a practicable alternative, the practicability of the floodplain or wetland location shall be balanced against the practicability of not carrying out the action at all. That is, even if there is no practicable alternative outside of the floodplain or wetland, the floodplain or wetland itself must be a practicable location in order for the action to be carried out there. To be a practicable location, the importance of carrying out the action must clearly outweigh the requirements of the Orders listed in paragraphs (e)(2) and (e)(3) of this section. Unless the importance of carrying out the action clearly outweighs those requirements, the "no action" alternative shall be selected.

(6) In any case in which the Regional Director has selected the "no action" option, FIA may not provide a new or renewed contract of flood insurance for that structure.

EDITORIAL NOTE: At 45 FR 79070, Nov. 28, 1980, § 9.9(e)(6) was temporarily suspended until further notice.

§ 9.10 Identify impacts of proposed actions.

(a) *Purpose.* The purpose of this section is to ensure that the effects of proposed Agency actions are identified.

(b) The Agency shall identify the potential direct and indirect adverse impacts associated with the occupancy and modification of floodplains and wetlands and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action. Such identification of impacts shall be to the extent necessary to comply with the requirements of the Orders to avoid floodplain and wetland locations unless they are the only practicable alternatives and to minimize harm to and within floodplains and wetlands.

(c) This identification shall consider whether the proposed action will result in an increase in the useful life of any structure or facility in question, maintain the investment at risk and exposure of lives to the flood hazard or forego an opportunity to restore the natural and beneficial values served by floodplains or wetlands. Regional Offices of the U.S. Fish and Wildlife Service may be contacted to aid in the identification and evaluation of potential impacts of the proposed action on natural and beneficial floodplain and wetland values.

(d) In the review of a proposed or alternative action, the Regional Director shall specifically consider and evaluate: impacts associated with modification of wetlands and floodplains regardless of its location; additional impacts which may occur when certain types of actions may support subsequent action which have additional impacts of their own; adverse impacts of the proposed actions on lives and property and on natural and beneficial floodplain and wetland values; and the three categories of factors listed below:

(1) *Flood hazard-related factors.* These include for example, the factors listed in § 9.7(b)(2);

(2) *Natural values-related factors.* These include, for example, the following: Water resource values (natural moderation of floods, water quality

maintenance, and ground water recharge); living resource values (fish and wildlife and biological productivity); cultural resource values (archeological and historic sites, and open space recreation and green belts); and agricultural, aquacultural and forestry resource values.

(3) *Factors relevant to a proposed action's effects on the survival and quality of wetlands.* These include, for example, the following: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

§ 9.11 Mitigation.

(a) *Purpose.* The purpose of this section is to expand upon the directives set out in § 9.6 of this part, and to set out the mitigative actions required if the preliminary determination is made to carry out an action that affects or is in a floodplain or wetland.

(b) *General provisions.* (1) The Agency shall design or modify its actions so as to minimize harm to or within the floodplain;

(2) The Agency shall minimize the destruction, loss or degradation of wetlands;

(3) The Agency shall restore and preserve natural and beneficial floodplain values; and

(4) The Agency shall preserve and enhance natural and beneficial wetland values.

(c) *Minimization provisions.* The Agency shall minimize:

(1) Potential harm to lives and the investment at risk from the base flood, or, in the case of critical actions, from the 500-year flood;

(2) Potential adverse impacts the action may have on others; and

(3) Potential adverse impact the action may have on floodplain and wetland values.

(d) *Minimization Standards.* In its implementation of the Disaster Relief Act of 1974, the Agency shall apply at a minimum, the following standards to its actions to comply with the requirements of paragraphs (b) and (c), of this section, (except as provided in § 9.5 (c), (d), and (g) regarding categories of partial or total exclusion). Any Agency action to which the following specific requirements do not apply, shall nevertheless be subject to the full 8-step process (§ 9.6) including the general requirement to minimize harm to and within floodplains:

(1) There shall be no new construction or substantial improvement in a floodway, and no new construction in a coastal high hazard area, except for:

(i) A functionally dependent use; or

(ii) A structure or facility which facilitates an open space use.

(2) For a structure which is a functionally dependent use, or which facilitates an open space use, the following applies. There shall be no construction of a new or substantially improved structure in a coastal high hazard area unless it is elevated on adequately anchored pilings or columns, and securely anchored to such piles or columns so that the lowest portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level (the 500-year flood level for critical actions) (including wave height). The structure shall be anchored so as to withstand velocity waters and hurricane wave wash. The Regional Director shall be responsible for determining the base flood level, including the wave height, in all cases. Where there is a FIRM in effect, it shall be the basis of the Regional Director's determination. If the FIRM does not reflect wave heights, or if there is no FIRM in effect, the Regional Director is responsible for delineating the base flood level, including wave heights.

(3) *Elevation of structures.* (i) There shall be no new construction or substantial improvement of structures unless the lowest floor of the structures (including basement) is at or above the level of the base flood.

(ii) There shall be no new construction or substantial improvement of structures involving a critical action unless the lowest floor of the structure (including the basement) is at or above the level of the 500-year flood.

(iii) If the subject structure is nonresidential, FEMA may, instead of elevating the structure to the 100-year or 500-year level, as appropriate, approve the design of the structure and its attendant utility and sanitary facilities so that below the flood level the structure is water tight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(iv) The provisions of paragraphs (d)(3)(i), (ii), and (iii) of this section do not apply to the extent that the Federal Insurance Administration has granted an exception under 44 CFR § 60.6(b) (formerly 24 CFR 1910.6(b)), or the community has granted a variance which the Regional Director determines is consistent with 44 CFR 60.6(a) (formerly 24 CFR 1910.6(a)). In a community which does not have a FIRM in effect, FEMA may approve a variance from the standards of paragraphs (d)(3)(i), (ii), and (iii) of this section, after compliance with the standards of 44 CFR 60.6(a).

(4) There shall be no encroachments, including fill, new construction, substantial improvements of structures or facilities, or other development within a designated regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge. Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the base floodplain unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(5) Even if an action is a functionally dependent use or facilitates open space uses (under paragraph (d) (1) or (2) of this section) and does not increase flood heights (under paragraph (d)(4) of this section), such action may only be taken in a floodway or coastal high hazard area if:

(i) Such site is the only practicable alternative; and

(ii) Harm to and within the floodplain is minimized.

(6) In addition to standards (d)(1) through (d)(5) of this section, no action may be taken if it is inconsistent with the criteria of the National Flood Insurance Program (44 CFR Part 59 *et seq.*) or any more restrictive Federal, State or local floodplain management standards.

(7) New construction and substantial improvement of structures shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill, in all cases in coastal high hazard areas and elsewhere, where practicable.

(8) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(i) Where appropriate, integrate all of its proposed actions in floodplains into existing flood warning and preparedness plans and ensure that available flood warning time is reflected;

(ii) Facilitate adequate access and egress to and from the site of the proposed action; and

(iii) Give special consideration to the unique hazard potential in flash flood, rapid-rise or tsunami areas.

(9) In the replacement of building contents, materials and equipment, the Regional Director shall require as appropriate, disaster proofing of the building and/or elimination of such future losses by relocation of those building contents, materials and equipment outside or above the base floodplain or the 500-year floodplain for critical actions.

(e) *In the implementation of the National Flood Insurance Program.* (1) The Federal Insurance Administration shall make identification of all coastal high hazard areas a priority;

(2) Beginning October 1, 1981, the Federal Insurance Administration of FEMA may only provide flood insurance for new construction or substantial improvements in a coastal high hazard area if:

(i) Wave heights have been designated for the site of the structure either by the Director of FEMA based upon data generated by FEMA or by another source, satisfactory to the Director; and

(ii) The structure is rated by FEMA-FIA based on a system which reflects the capacity to withstand the effects of the 100-year frequency flood including, but not limited to, the following factors:

(A) Wave heights;

(B) The ability of the structure to withstand the force of waves.

(3)(i) FEMA shall accept and take fully into account information submitted by a property owner indicating that the rate for a particular structure is too high based on the ability of the structure to withstand the force of waves. In order to obtain a rate adjustment, a property owner must submit to FEMA specific information regarding the structure and its immediate environment. Such information must be certified by a registered professional architect or engineer who has demonstrable experience and competence in the fields of foundation, soils, and structural engineering. Such information should include:

(A) Elevation of the structure (bottom of lowest floor beam) in relation to the Base Flood Elevation including wave height;

(B) Distance of the structure from the shoreline;

(C) Dune protection and other environmental factors;

(D) Description of the building support system; and

(E) Other relevant building details.

Adequate completion of the "V-Zone Risk Factor Rating Form" is sufficient for FEMA to determine whether a rate adjustment is appropriate. The form is available from and applications for rate adjustments should be submitted to:

National Flood Insurance Program
Attention: V-Zone Underwriting Specialist
9901-A George Palmer Highway
Lanham, MD 20706

Pending a determination on a rate adjustment, insurance will be issued at the class rate. If the rate adjustment is granted, a refund of the appropriate portion of the premium will be made. *Unless a property owner is seeking an adjustment of the rate prescribed by FEMA-FIA, this information need not be submitted.*

(ii) FIA shall notify communities with coastal high hazard areas and federally related lenders in such communities, of the provisions of this paragraph. Notice to the lenders may be accomplished by the Federal instrumentalities to which the lenders are related.

(4) In any case in which the Regional Director has been, pursuant to § 9.11(d)(1), precluded from providing assistance for a new or substantially improved structure in a floodway, FIA may not provide a new or renewed policy of flood insurance for that structure.

(f) *Restore and preserve.* (1) For any action taken by the Agency which affects the floodplain or wetland and which has resulted in, or will result in, harm to the floodplain or wetland, the Agency shall act to restore and preserve the natural and beneficial values served by floodplains and wetlands.

(2) Where floodplain or wetland values have been degraded by the proposed action, the Agency shall identify, evaluate and implement measures to restore the values.

(3) If an action will result in harm to or within the floodplain or wetland, the Agency shall design or modify the action to preserve as much of the natural and beneficial floodplain and wetland values as is possible.

[45 FR 59526, Sept. 9, 1980, as amended at 46 FR 51752, Oct. 22, 1981; 48 FR 44541, Sept. 29, 1983; 49 FR 33879, Aug. 27, 1984; 49 FR 35584, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985]

EDITORIAL NOTE: At 45 FR 79070, Nov. 28, 1980, § 9.11(e)(4) was temporarily suspended until further notice.

§ 9.12 Final public notice.

If the Agency decides to take an action in or affecting a floodplain or wetland, it shall provide the public with a statement of its final decision and shall explain the relevant factors considered by the Agency in making this determination.

(a) In addition, those sent notices under § 9.8 shall also be provided the final notice.

(b) For actions for which an environmental impact statement is being prepared, the FEIS is adequate to constitute final notice in all cases except where:

(1) Significant modifications are made in the FEIS after its initial publication;

(2) Significant modifications are made in the development plan for the proposed action; or

(3) Significant new information becomes available in the interim between issuance of the FEIS and implementation of the proposed action.

If any of these situations develop, the Agency shall prepare a separate final notice that contains the contents of paragraph (e) of this section and shall make it available to those who received the FEIS. A minimum of 15 days shall, without good cause shown, be allowed for comment on the final notice.

(c) For actions for which an environmental assessment was prepared, the Notice of No Significant Impact is adequate to constitute final public notice, if it includes the information required under paragraph (e) of this section.

(d) For all other actions, the finding shall be made in a document separate from those described in paragraphs (a), (b), and (c) of this section. Based on an assessment of the following factors, the requirement for final notice may be met in a cumulative manner:

(1) Scale of the action;

(2) Potential for controversy;

(3) Degree of public need;

(4) Number of affected agencies and individuals;

(5) Its anticipated potential impact; and

(6) Similarity of the actions, i.e., to the extent that they are susceptible of common descriptions and assesssments.

When a damaged structure or facility is already being repaired by the State or local government at the time of the Damage Survey Report, the requirements of Steps 2 and 7 (§§ 9.8 and 9.12) may be met by a single notice. Such notice shall contain all the information required by both sections.

(e) The final notice shall include the following:

(1) A statement of why the proposed action must be located in an area affecting or affected by a floodplain or a wetland;

(2) A description of all significant facts considered in making this determination;

(3) A list of the alternatives considered;

(4) A statement indicating whether the action conforms to applicable state and local floodplain protection standards;

(5) A statement indicating how the action affects or is affected by the floodplain and/or wetland, and how mitigation is to be achieved;

(6) Identification of the responsible official or organization for implementation and monitoring of the proposed action, and from whom further information can be obtained; and

(7) A map of the area or a statement that such map is available for public inspection, including the location at which such map may be inspected and a telephone number to call for information.

(f) After providing the final notice, the Agency shall, without good cause shown, wait at least 15 days before carrying out the action.

[45 FR 59526, Sept. 9, 1980, as amended at 48 FR 29318, June 24, 1983]

§ 9.13 Particular types of temporary housing.

(a) The purpose of this section is to set forth the procedures whereby the Agency will provide certain specified types of temporary housing.

(b) Prior to providing the types of temporary housing enumerated in paragraph (c) of this section, the Agency shall comply with the provisions of this section. For all temporary housing not enumerated below, the full 8-step process (see § 9.6) applies.

(c) The following temporary housing actions are subject to the provisions of this section and not the full 8-step process:

(1) [Reserved]

(2) Placing a mobile home or readily fabricated dwelling on a private or commercial site, but not a group site.

(d) The actions set out in paragraph (c) of this section are subject to the following decision-making process:

(1) The temporary housing action shall be evaluated in accordance with the provisions of § 9.7 to determine if it is in or affects a floodplain or wetland.

(2) No mobile home or readily fabricated dwelling may be placed on a private or commercial site in a floodway or coastal high hazard area.

(3) An individual or family shall not be housed in a floodplain or wetland unless the Regional Director has complied with the provisions of § 9.9 to determine that such site is the only practicable alternative. The following factors shall be substituted for the factors in § 9.9 (c) and (e) (2) through (4):

(i) Speedy provision of temporary housing;

(ii) Potential flood risk to the temporary housing occupant;

(iii) Cost effectiveness;

(iv) Social and neighborhood patterns;

(v) Timely availability of other housing resources; and

(vi) Potential harm to the floodplain or wetland.

(4) An individual or family shall not be housed in a floodplain or wetland (except in existing resources) unless the Regional Director has complied with the provisions of § 9.11 to minimize harm to and within floodplains and wetlands. The following provisions shall be substituted for the provisions of § 9.11(d) for mobile homes:

(i) No mobile home or readily fabricated dwelling may be placed on a private or commercial site unless it is elevated to the fullest extent practicable up to the base flood level and adequately anchored.

(ii) No mobile home or readily fabricated dwelling may be placed if such placement is inconsistent with the criteria of the National Flood Insurance Program (44 CFR Part 59 *et seq.*) or any more restrictive Federal, State or local floodplain management standard. Such standards may require elevation to the base flood level in the absence of a variance.

(iii) Mobile homes shall be elevated on open works (walls, columns, piers, piles, etc.) rather than on fill where practicable.

(iv) To minimize the effect of floods on human health, safety and welfare, the Agency shall:

(A) Where appropriate, integrate all of its proposed actions in placing mobile homes for temporary housing in floodplains into existing flood warning and preparedness plans and ensure that available flood warning time is reflected;

(B) Provide adequate access and egress to and from the proposed site of the mobile home; and

(C) Give special consideration to the unique hazard potential in flash flood and rapid-rise areas.

(5) FEMA shall comply with Step 2 Early Public Notice (§ 9.8(c)) and Step 7 Final Public Notice (§ 9.12). In providing these notices, the emergency nature of temporary housing shall be taken into account.

(e) FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings which would be located in floodways or coastal high hazard areas. FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings which would be located in floodplains or wetlands unless there is full compliance with the 8-step process. Given the vulnerability of mobile homes to flooding, a rejection of a non-floodplain location alternative and of the no-action alternative shall be based on (1) a compelling need of the family or individual to buy a mobile home for permanent housing, and (2) a compelling requirement to locate the unit in a floodplain. Further, FEMA shall not sell or otherwise dispose of mobile homes or other readily fabricated dwellings in a floodplain unless they are elevated at least to the level of the 100-year flood. The Regional Director shall notify the Associate Director for State and Local Programs and Support of each instance where a floodplain location has been found to be the only practicable alternative for a mobile home sale.

[45 FR 59526, Sept. 9, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 49 FR 35584, Sept. 10, 1984; 50 FR 40006, Oct. 1, 1985]

§ 9.14 Disposal of Agency property.

(a) The purpose of this section is to set forth the procedures whereby the Agency shall dispose of property.

(b) Prior to its disposal by sale, lease or other means of disposal, property proposed to be disposed of by the Agency shall be reviewed according to the decision-making process set out in § 9.6 of this part, as follows:

(1) The property shall be evaluated in accordance with the provisions of § 9.7 to determine if it affects or is affected by a floodplain or wetland;

(2) The public shall be notified of the proposal and involved in the decision-making process in accordance with the provisions of § 9.8;

(3) Practicable alternatives to disposal shall be evaluated in accordance with the provisions of § 9.9. For disposals, this evaluation shall focus on alternative actions (conveyance for an alternative use that is more consistent with the floodplain management and wetland protection policies set out in § 9.2 than the one proposed, e.g., open space use for park or recreational purposes rather than high intensity uses), and on the "no action" option (retain the property);

(4) Identify the potential impacts and support associated with the disposal of the property in accordance with § 9.10;

(5) Identify the steps necessary to minimize, restore, preserve and enhance in accordance with § 9.11. For disposals, this analysis shall address all four of these components of mitigation where unimproved property is involved, but shall focus on minimization through floodproofing and restoration of natural values where improved property is involved;

(6) Reevaluate the proposal to dispose of the property in light of its exposure to the flood hazard and its natural values-related impacts, in accordance with § 9.9. This analysis shall focus on whether it is practicable in light of the findings from §§ 9.10 and 9.11 to dispose of the property, or whether it must be retained. If it is determined that it is practicable to dispose of the property, this analysis shall identify the practicable alternative that best achieves all of the components of the Orders' mitigation responsibility;

(7) To the extent that it would decrease the flood hazard to lives and property, the Agency shall, wherever practicable, dispose of the properties according to the following priorities:

(i) Properties located outside the floodplain;

(ii) Properties located in the flood fringe; and

(iii) Properties located in a floodway, regulatory floodway or coastal high hazard area.

(8) The Agency shall prepare and provide the public with a finding and public explanation in accordance with § 9.12.

(9) The Agency shall ensure that the applicable mitigation requirements are fully implemented in accordance with § 9.11.

(c) At the time of disposal, for all disposed property, the Agency shall reference in the conveyance uses that are restricted under existing Federal, State and local floodplain management and wetland protection standards relating to flood hazards and floodplain and wetland values.

§ 9.15 Planning programs affecting land use.

The Agency shall take floodplain management into account when formulating or evaluating any water and land use plans. No plan may be approved unless it:

(a) Reflects consideration of flood hazards and floodplain management and wetlands protection; and

(b) Prescribes planning procedures to implement the policies and requirements of the Orders and this regulation.

§ 9.16 Guidance for applicants.

(a) The Agency shall encourage and provide adequate guidance to applicants for agency assistance to evaluate the effects of their plans and proposals in or affecting floodplains and wetlands.

(b) This shall be accomplished primarily through amendment of all Agency instructions to applicants, e.g., program handbooks, contracts, application and agreement forms, etc., and also through contact made by agency staff during the normal course of their activities, to fully inform prospective applicants of:

(1) The Agency's policy on floodplain management and wetlands protection as set out in § 9.2;

(2) The decision-making process to be used by the Agency in making the determination of whether to provide the required assistance as set out in § 9.6;

(3) The nature of the Orders' practicability analysis as set out in § 9.9;

(4) The nature of the Orders' mitigation responsibilities as set out in § 9.11;

(5) The nature of the Orders' public notice and involvement process as set out in §§ 9.8 and 9.12; and

(6) The supplemental requirements applicable to applications for the lease or other disposal of Agency owned properties set out in § 9.14.

(c) Guidance to applicants shall be provided where possible, prior to the time of application in order to minimize potential delays in process application due to failure of applicants to recognize and reflect the provisions of the Orders and this regulation.

§ 9.17 Instructions to applicants.

(a) *Purpose.* In accordance with Executive Orders 11988 and 11990, the Federal executive agencies must respond to a number of floodplain management and wetland protection responsibilities before carrying out any of their activities, including the provision of Federal financial and technical assistance. The purpose of this section is to put applicants for Agency assistance on notice concerning both the criteria that it is required to follow under the Orders, and applicants' responsibilities under this regulation.

(b) *Responsibilities of Applicants.* Based upon the guidance provided by the Agency under § 9.16, that guidance included in the U.S. Water Resources Council's *Guidance for Implementing E.O. 11988*, and based upon the provisions of the Orders and this regulation, applicants for Agency assistance shall recognize and reflect in their application:

(1) The Agency's policy on floodplain management and wetlands protection as set out in § 9.2;

(2) The decision-making process to be used by the Agency in making the determination of whether to provide the requested assistance as set out in § 9.6;

(3) The nature of the Orders' practicability analysis as set out in § 9.9;

(4) The nature of the Orders' mitigation responsibilities as set out in § 9.11;

(5) The nature of the Orders' public and involvement process as set out in §§ 9.8 and 9.12; and

(6) The supplemental requirements for application for the lease or other disposal of Agency-owned properties, as set out in § 9.13.

(c) *Provision of supporting information.* Applicants for Agency assistance may be called upon to provide supporting information relative to the various responsibilities set out in paragraph (b) of this section as a prerequisite to the approval of their applications.

(d) *Approval of applications.* Applications for Agency assistance shall be reviewed for the recognition and reflection of the provisions of this regulation in addition to the Agency's existing approval criteria.

§ 9.18 Responsibilities.

(a) *Regional Directors' responsibilities.* Regional Directors shall, for all actions falling within their respective jurisdictions:

(1) Implement the requirements of the Orders and this regulation. Anywhere in §§ 9.2, 9.6 through 9.13, and 9.15 where a direction is given to the Agency, it is the responsibility of the Regional Director.

(2) Consult with the General Counsel regarding any question of interpretation concerning this regulation or the Orders.

(b) *Associate Directors' responsibilities.* Associate Directors/Administrators shall ensure that the offices/administrations under their jurisdiction:

(1) Implement the requirements of the Orders and this regulation. When a decision of a Regional Director relating to disaster assistance is appealed, the Associate Director for State and Local Programs and Support may make determinations under these regulations on behalf of the Agency.

(2) Identify within ninety (90) days of the effective date of this regulation:

(i) The modifications that are necessary to make their existing floodplain management and wetlands protection procedures adequate to meet the directives of the Orders;

(ii) Which of these modifications should be made a part of this regulation;

(iii) Which of these modifications are to be included in program regulations other than this one; and

(iv) The steps being taken to prepare and implement these modifications.

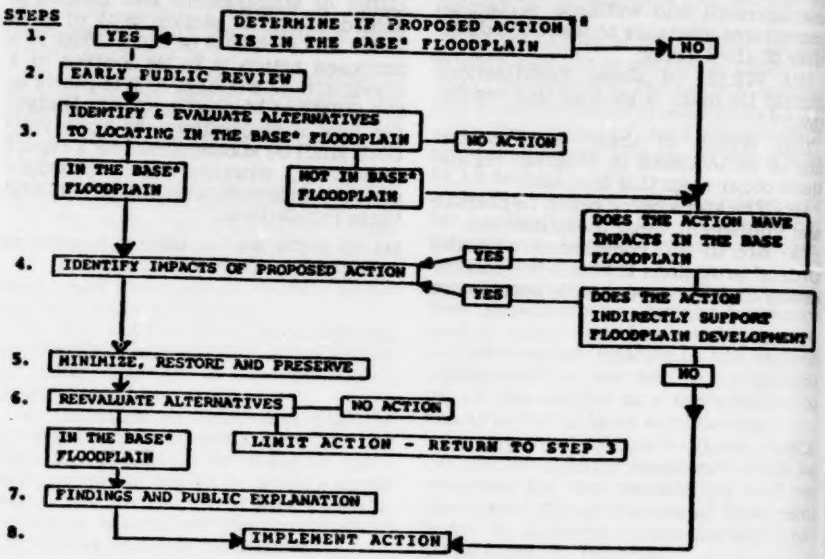
(3) Are in full compliance with the Orders' provisions through the modification of their processes in accordance with paragraphs (b) (1) and (2) of this section.

(4) Prepare and submit to the Office of General Counsel reports to the Office of Management and Budget in accordance with section 2(b) of E.O. 11988 and section 3 of E.O. 11990. If a proposed action is to be located in a floodplain or wetland, any requests to the Office of Management and Budget for new authorizations or appropriations shall be accompanied by a report indicating whether the proposed action is in accord with the Orders and these regulations.

[45 FR 59526, Sept. 9, 1980, as amended at 49 FR 33879, Aug. 27, 1984]

APPENDIX A

DECISION-MAKING PROCESS FOR E.O. 11988


STEPS
1.
YES
DETERMINE IF PROPOSED ACTION IS IN THE BASE* FLOODPLAIN **
NO
2.
EARLY PUBLIC REVIEW
3.
IDENTIFY & EVALUATE ALTERNATIVES TO LOCATING IN THE BASE* FLOODPLAIN
NO ACTION
IN THE BASE* FLOODPLAIN
NOT IN BASE* FLOODPLAIN
DOES THE ACTION HAVE IMPACTS IN THE BASE FLOODPLAIN
YES
4.
IDENTIFY IMPACTS OF PROPOSED ACTION
YES
DOES THE ACTION INDIRECTLY SUPPORT FLOODPLAIN DEVELOPMENT
NO
5.
MINIMIZE, RESTORE AND PRESERVE
6.
REEVALUATE ALTERNATIVES
NO ACTION
IN THE BASE* FLOODPLAIN
LIMIT ACTION - RETURN TO STEP 3
7.
FINDINGS AND PUBLIC EXPLANATION
8.
IMPLEMENT ACTION

* FOR CRITICAL ACTIONS SUBSTITUTE "500 YEAR" FOR "BASE" AND FOR WETLANDS DELETE "BASE FLOODPLAIN" AND SUBSTITUTE " WETLANDS".

** FOR WETLANDS "ACTION" INCLUDES "NEW CONSTRUCTION" ONLY.

PART 10—ENVIRONMENTAL CONSIDERATIONS

Subpart A—General

Sec.

10.1 Background and purpose.
10.2 Applicability and scope.
10.3 Definitions.
10.4 Policy.

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10.5 Responsibilities.
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10.9 Preparation of environmental assessments.
10.10 Preparation of environmental impact statements.
10.11 Environmental information.
10.12 Pre-implementation actions.
10.13 Emergencies.
10.14 Flood plains and wetlands.

AUTHORITY: 42 U.S.C. 4321 *et seq.*; E.O. 11514 as amended by E.O. 11991; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

SOURCE: 45 FR 41142, June 18, 1980, unless otherwise noted.

Subpart A—General

§ 10.1 Background and purpose.

(a) This part implements the Council on Environmental Quality (CEQ) regulations (National Environmental Policy Act Regulations, 43 FR 55978 (1978)) and provides policy and procedures to enable Federal Emergency Management Agency (FEMA) officials to be informed of and take into account environmental considerations when authorizing or approving major FEMA actions that significantly affect the environment in the United States. The Council on Environmental Quality Regulations implement the procedural provisions, section 102(2), of the National Environmental Policy Act of 1969, as amended (hereinafter NEPA) (Pub. L. 91-190, 42 U.S.C. 4321 *et seq.*), and Executive Order 11991, 42 FR 26967 (1977).

(b) Section 1507.3, Council on Environmental Quality Regulations (National Environmental Policy Act Regulations, 43 FR 55978 (1978)) directs that Federal agencies shall adopt procedures to supplement the CEQ regulations. This regulation provides detailed FEMA implementing procedures to supplement the CEQ regulations.

(c) The provisions of this part must be read together with those of the CEQ regulations and NEPA as a whole when applying the NEPA process.

§ 10.2 Applicability and scope.

The provisions of this part apply to the Federal Emergency Management Agency, (hereinafter referred to as FEMA) including any office or administration of FEMA, and the FEMA regional offices.

§ 10.3 Definitions.

(a) Regional Director means the Regional Director of the Federal Emergency Management Agency for the region in which FEMA is acting.

(b) The other terms used in this part are defined in the CEQ regulations (40 CFR Part 1508).

(c) Environmental Officer means the Chief, Public Assistance Division, Office of Disaster Assistance Programs, State and Local Programs and Support Directorate.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 50 FR 40006, Oct. 1, 1985]

§ 10.4 Policy.

(a) FEMA shall act with care to assure that, in carrying out its responsibilities, including disaster planning, response and recovery and hazard mitigation and flood insurance, it does so in a manner consistent with national environmental policies. Care shall be taken to assure, consistent with other considerations of national policy, that all practical means and measures are used to protect, restore, and enhance the quality of the environment, to avoid or minimize adverse environmental consequences, and to attain the objectives of:

(1) Achieving use of the environment without degradation, or undesirable and unintended consequences;

(2) Preserving historic, cultural and natural aspects of national heritage and maintaining, wherever possible, an environment that supports diversity and variety of individual choice;

(3) Achieving a balance between resource use and development within the sustained carrying capacity of the ecosystem involved; and

(4) Enhancing the quality of renewable resources and working toward the maximum attainable recycling of depletable resources.

(b) FEMA shall: (1) Assess environmental consequences of FEMA actions in accordance with §§ 10.9 and 10.10 of this part and Parts 1500 through 1508 of the CEQ regulations;

(2) Use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences, and environmental considerations, in planning and decisionmaking where there is a potential for significant environmental impact;

(3) Ensure that presently unmeasured environmental amenities are considered in the decisionmaking process;

(4) Consider reasonable alternatives to recommended courses of action in any proposal that involves conflicts concerning alternative uses of resources; and

(5) Make available to States, counties, municipalities, institutions and in-

dividuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment.

Subpart B—Agency Implementing Procedures

§ 10.5 Responsibilities.

(a) *The Regional Directors shall,* for each action not categorically excluded from this regulation and falling within their respective jurisdictions:

(1) Prepare an environmental assessment and submit such assessment to the Environmental Officer and the Office of General Counsel (OGC);

(2) Prepare a finding of no significant impact, or prepare an environmental impact statement;

(3) Coordinate and provide information regarding environmental review with applicants for FEMA assistance;

(4) Prepare and maintain an administrative record for each proposal that is determined to be categorically excluded from this regulation;

(5) Involve environmental agencies, applicants, and the public to the extent practicable in preparing environmental assessments;

(6) Prepare, as required, a supplement to either the draft or final environmental impact statement;

(7) Circulate draft and final environmental impact statements;

(8) Ensure that decisions are made in accordance with the policies and procedures of NEPA and this part, and prepare a concise public record of such decisions;

(9) Consider mitigating measures to avoid or minimize environmental harm, and, in particular, harm to and within floodplains and wetlands; and

(10) Review and comment upon, as appropriate, environmental assessments and impact statements of other Federal agencies and of State and local entities within their respective regions.

(b) *The Environmental Officer shall:* (1) Determine, on the basis of the environmental assessment whether an environmental impact statement is required, or whether a finding of no significant impact shall be prepared;

(2) Review all proposed changes or additions to the list of categorical exclusions;

(3) Review all findings of no significant impact;

(4) Review all proposed draft and final environmental statements;

(5) Publish the required notices in the FEDERAL REGISTER;

(6) Provide assistance in the preparation of environmental assessments and impact statements and assign lead agency responsibility when more than one FEMA office or administration is involved;

(7) Direct the preparation of environmental documents for specific actions when required;

(8) Comply with the requirements of this part when the Director of FEMA promulgates regulations, procedures or other issuances making or amending Agency policy;

(9) Provide, when appropriate, consolidated FEMA comments on draft and final impact statements prepared for the issuance of regulations and procedures of other agencies;

(10) Review FEMA issuances that have environmental implications;

(11) Maintain liaison with the Council on Environmental Quality, the Environmental Protection Agency, the Office of Management and Budget, other Federal agencies, and State and local groups, with respect to environmental analysis for FEMA actions affecting the environment.

(c) *The Heads of the Office and Administrations of FEMA shall:* (1) Assess environmental consequences of proposed and on-going programs within their respective organizational units;

(2) Prepare and process environmental assessments and environmental impact statements for all regulations, procedures and other issuances making or amending program policy related to actions which do not qualify for categorical exclusions;

(3) Integrate environmental considerations into their decisionmaking processes;

(4) Ensure that regulations, procedures and other issuances making or amending program policy are reviewed for consistency with the requirements of this part;

(5) Designate a single point of contact for matters pertaining to this part;

(6) Provide applicants for FEMA assistance with technical assistance regarding FEMA's environmental review process.

(d) *The Office of General Counsel of FEMA shall:* (1) Provide advice and assistance concerning the requirements of this part;

(2) Review all proposed changes or additions to the list of categorical exclusions;

(3) Review all findings of no significant impact; and

(4) Review all proposed draft and final environmental impact statements.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

§ 10.6 Making or amending policy.

For all regulations, procedures, or other issuances making or amending policy, the head of the FEMA office or administration establishing such policy shall be responsible for application of this part to that action. This does not apply to actions categorically excluded. For all policy-making actions not categorically excluded, the head of the office or administration shall comply with the requirements of this part. Thus, for such actions, the office or administration head shall assume the responsibilities that a Regional Director assumes for a FEMA action in his/her respective region. For such policy-making actions taken by the Director of FEMA, the Environmental Officer shall assume the responsibilities that a Regional Director assumes for a FEMA action in his/her respective region.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

§ 10.7 Planning.

(a) *Early planning.* The Regional Director shall integrate the NEPA process with other planning at the earliest possible time to ensure that planning decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts.

(b) *Lead agency.* To determine the lead agency for policy-making in which more than one FEMA office or administration is involved or any action in which another Federal agency is involved, FEMA offices and administrations shall apply criteria defined in § 1501.5 of the CEQ regulation. If there is disagreement, the FEMA offices and/or administrations shall forward a request for lead agency determination to the Environmental Officer;

(1) The Environmental Officer will determine lead agency responsibility among FEMA offices and administration.

(2) In those cases involving a FEMA office or administration and another Federal agency, the Environmental Officer will attempt to resolve the differences. If unsuccessful, the Environmental Officer will file the request with the Council on Environmental Quality for determination.

(c) *Technical assistance to applicants.* (1) Section 1501.2(d) of the CEQ regulations requires agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some form of Federal approval. To implement the requirements of § 1501.2(d),

(i) The heads of the FEMA offices and administration shall prepare where practicable, generic guidelines describing the scope and level of environmental information required from applicants as a basis for evaluating their proposed actions, and make these guidelines available upon request.

(ii) The Regional Director shall provide such guidance on a project-by-project basis to applicants seeking assistance from FEMA.

(iii) Upon receipt of an application for agency approval, or notification that an application will be filed, the Regional Director shall consult as required with other appropriate parties to initiate and coordinate the necessary environmental analyses.

(2) To facilitate compliance with the requirements of paragraph (a) of this section, applicants and other non-Federal entities are expected to:

(i) Contact the Regional Director as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their application;

(ii) Conduct any studies which are deemed necessary and appropriate by FEMA to determine the impact of the proposed action on the human environment;

(iii) Consult with appropriate Federal, regional, State, and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(iv) Submit applications for all Federal, regional, State, and local approvals as early as possible in the planning process;

(v) Notify the Regional Director as early as possible of all other Federal, regional, State, local, and Indian tribe actions required for project completion so that FEMA may coordinate all Federal environmental reviews; and

(vi) Notify the Regional Director of all known parties potentially affected by or interested in the proposed action.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

§ 10.8 Determination of requirement for environmental review.

The first step in applying the NEPA process is to determine whether to prepare an environmental assessment or an environmental impact statement. Early determination will help ensure that necessary environmental documentation is prepared and integrated into the decision-making process. Environmental impact statements will be prepared for all major Agency actions (see 40 CFR 1508.18) significantly (see 40 CFR 1508.27) affecting the quality of the human environment.

(a) In determining whether to prepare an environmental impact statement (EIS) the Regional Director will first determine whether the proposal is one which:

(1) Normally requires an environmental impact statement; or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) *Actions that normally require an EIS.* (1) In some cases, it will be readily apparent that a proposed action will have significant impact on the environment. In that event, the Regional Director will, pursuant to § 10.9(g) of this part, submit the notice of preparation of an environmental impact statement to the Environmental Officer.

(2) To assist in determining those actions that normally do require an environmental impact statement, the following criteria apply:

(i) If an action will result in an extensive change in land use or the commitment of a large amount of land;

(ii) If an action will result in a land use change which is incompatible with the existing or planned land use of the surrounding area;

(iii) If many people will be affected;

(iv) If the environmental impact of the project is likely to be controversial;

(v) If an action will affect, in large measure, wildlife populations and their habitats, important natural resources, floodplains, wetlands, estuaries, beaches, dunes, unstable soils, steep slopes, aquifer recharge areas, or delicate or rare ecosystems, including endangered species;

(vi) If an action will result in a major adverse impact upon air or water quality;

(vii) If an action will adversely affect a property listed on the National Register of Historic Places or eligible for listing on the Register if, after consultation with the Advisory Council on Historic Preservation an environmental assessment is not deemed sufficient;

(viii) If an action is one of several actions underway or planned for an area and the cumulative impact of these projects is considered significant in terms of the above criteria;

(ix) If an action holds potential for threat or hazard to the public; or

(x) If an action is similar to previous actions determined to require an environmental impact statement.

(3) In any case involving an action that normally does require an environmental impact statement, the Regional Director may prepare an environmental assessment to determine if an

environmental impact statement is required.

(c) *Categorical exclusions.* The CEQ regulations provide for the categorical exclusion (40 CFR 1508.4) of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. Full implementation of this concept will help FEMA to avoid unnecessary or duplicative effort and concentrate resources on significant environmental issues.

(1) *Criteria.* The criteria used for determination of those categories of actions that normally do not require either an environmental impact statement or an environmental assessment include:

(i) Minimal or no effect on environmental quality;

(ii) No significant change to existing environmental conditions; and

(iii) No significant cumulative environmental impact.

(2) *List of categorical exclusions.* Categories of actions that have been determined by FEMA to have no significant effect on the human environment and are, therefore, categorically excluded from the preparation of environmental impact statements and environmental assessments are:

(i) Preparation of regulations, directives, manuals, and other guidance related to actions which qualify for categorical exclusions;

(ii) Training activities and training exercises conducted on FEMA installations in accordance with established procedures and land use designations;

(iii) Procurement activities that provide goods and services for routine installation operations and support;

(iv) Routine installation, maintenance, and grounds-keeping activities;

(v) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes;

(vi) Studies that involve no commitment of resources other than manpower and funding; and

(vii) The following actions taken under the Disaster Relief Act of 1974 (Pub. L. 93-288), as amended:

(A) Emergency Support Teams (section 304);

(B) Unemployment Assistance (section 407);

(C) Disaster Legal Services (section 412);

(D) Emergency Communications (section 415);

(E) Emergency Public Transportation (section 416);

(F) Fire Suppression Assistance (section 417);

(G) Community Disaster Loans (section 414) except to the extent that the proceeds of the loan will be used for repair of facilities or structures or for construction of additional facilities or structures;

(H) Debris Removal (section 403), except those grants involving nonemergency disposal or removal of debris;

(I) The following Individual and Family Grant Program (section 408) actions:

(*1*) Housing needs or expenses, except for restoring, repairing or building private bridges, purchase of mobile homes and provision of structures as minimum protective measures;

(*2*) Personal property needs or expenses;

(*3*) Transportation expenses;

(*4*) Medical/dental expenses;

(*5*) Funeral expenses;

(*6*) Limited home repairs;

(*7*) Flood insurance premium;

(*8*) Cost estimates;

(*9*) Food expenses; and

(*10*) Temporary rental accommodations; and

(J) Temporary housing, except for federally-funded development of or placement of mobile homes, travel trailers, or other readily fabricated dwellings on group sites. A group site consists of 25 or more units, unless located in a base floodplain, wetland, or other recognized high hazard area, in which case more than one unit on a site constitutes a group. A group site does not include more than one unit on a private site (section 404); and

(K) Crisis counseling assistance and training (section 413).

(viii) Administrative actions such as personnel actions, travel, procurement of supplies, etc., in support of maintaining normal day to day actions.

(ix) Community-wide exceptions for floodproofed residential basements meeting the requirements of 44 CFR 60.6 (c) under the National Flood Insurance Program.

(3) *Statutory categorical exclusions.* The following actions are categorically excluded from the preparation of environmental impacts statements and environmental assessments by section 405 of the Disaster Relief Act of 1974 (Pub. L. 93-288); as amended:

(i) Action taken or assistances provided under sections 305, 306 or 403 of the Disaster Relief Act of 1974, as amended, (Pub. L. 93-288); and

(ii) Action taken or assistance provided under section 402 or 419 of the Disaster Relief Act of 1974, as amended, that has the effect of restoring facilities substantially as they existed prior to a major disaster or emergency.

(d) *Changes to the list of categorical exclusions.* (1) The FEMA List of Categorical Exclusions will be continually reviewed and refined as additional categories are identified and experience is gained in the categorical exclusion process. An office or administration of FEMA may, at any time, recommend additions or changes to the FEMA List of Categorical Exclusions.

(2) Offices and administrations of FEMA are encouraged to develop additional categories of exclusions necessary to meet their unique operational and mission requirements.

(3) If an office or administration of FEMA proposes to change or add to the list of categorical exclusions, it shall first:

(i) Obtain the approval of the Environmental Officer and FEMA's Office of General Counsel; and

(ii) Public notice of such proposed change or addition in the FEDERAL REGISTER at least 60 days prior to the effective date of such change or addition.

(e) *Extraordinary circumstances.* If extraordinary circumstances exist, such that an action that is categorically excluded from NEPA compliance may have a significant environmental impact, an environmental assessment shall be prepared. Extraordinary circumstances that may have a significant environmental impact include:

(1) Greater scope or size than normally experienced for a particular category of action.

(2) Actions in highly populated or congested areas.

(3) Potential for degradation, even though slight, of already existing poor environmental conditions.

(4) Employment of unproven technology.

(5) Presence of endangered species, archaeological remains, or other protected resources.

(6) Use of hazardous or toxic substances.

(7) Actions in flood plains or wetlands.

(f) *Documentation.* The Regional Director will prepare and maintain an administrative record of each proposal that is determined to be categorically excluded from the preparation of an environmental impact statement or an environmental assessment.

(g) *Actions that normally require an environmental assessment.* When a proposal is not one that normally requires an environmental impact statement and does not qualify as a categorical exclusion, the Regional Director shall prepare an environmental assessment.

[45 FR 41142, June 18, 1980, as amended at 46 FR 2049, Jan. 8, 1981; 46 FR 54346, Nov. 3, 1981; 47 FR 13149, Mar. 29, 1982; 52 FR 5285, Feb. 20, 1987]

§ 10.9 Preparation of environmental assessments.

(a) *When to prepare.* The Regional Director shall begin preparation of an environmental assessment as early as possible after the determination that an assessment is required. The Regional Director may prepare an environmental assessment at any time to assist planning and decision-making.

(b) *Content and format.* The environmental assessment is a concise public document to determine whether to prepare an environmental impact statement, aiding in compliance with NEPA when no EIS is necessary, and facilitating preparation of a statement when one is necessary. Preparation of an environmental assessment generally will not require extensive research or lengthy documentation. The environmental assessment shall contain brief discussion of the following:

(1) Purpose and need for the proposed action.

(2) Description of the proposed action.

(3) Alternatives considered.

(4) Environmental impact of the proposed action and alternatives.

(5) Listing of agencies and persons consulted.

(6) Conclusion of whether to prepare an environmental impact statement.

(c) *Public participation.* The Regional Director shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing environmental assessments. In determining "to the extent practicable," the Regional Director shall consider:

(1) Magnitude of the proposal;

(2) Likelihood of public interest;

(3) Need to act quickly;

(4) Likelihood of meaningful public comment;

(5) National security classification issues;

(6) Need for permits; and

(7) Statutory authority of environmental agency regarding the proposal.

(d) *When to prepare an EIS.* The Regional Director shall prepare an environmental impact statement for all major Agency actions significantly affecting the quality of the human environment. The test of what is a "significant" enough impact to require an EIS is found in the CEQ regulations at 40 CFR 1508.27.

(e) *Finding of No Significant Impact.* If the Regional Director determines on the basis of the environmental assessment not to prepare an environmental impact statement, the Regional Director shall prepare a finding of no significant impact in accordance with 40 CFR 1501.4(e) of the CEQ regulations. The assessment and the finding shall be submitted to the Environmental Officer and the Office of General Counsel (OGC) for approval. If Environmental Officer and OGC approval is obtained, the Regional Director shall then make the finding of no significant impact available to the public as specified in § 1506.6 of the CEQ regulations. A finding of no significant impact is not required when the decision not to prepare an environmental impact statement is based on a categorical exclusion.

(f) *Environmental Officer or OGC Disallowance.* If the Environmental Officer or OGC disagrees with the finding of no significant impact, the Regional Director shall prepare an environmental impact statement. Prior to preparation of an EIS, the Regional Director shall forward a notice of intent to prepare the EIS to the Environmental Officer who shall publish such notice in the FEDERAL REGISTER.

(g) *EIS determination of Regional Director.* The Regional Director may decide on his/her own to prepare an environmental impact statement. In such case, the Regional Director shall forward a notice of intent to prepare the EIS to the Environmental Officer who shall publish such notice in the FEDERAL REGISTER. The notice of intent shall be published before initiation of the scoping process.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

§ 10.10 Preparation of environmental impact statements.

(a) *Scoping.* After determination that an environmental impact statement will be prepared and publication of the notice of intent, the Regional Director will initiate the scoping process in accordance with § 1501.7 of the CEQ regulations.

(b) *Preparation.* Based on the scoping process, the Regional Director will begin preparation of the environmental impact statement. Detailed procedures for preparation of the environmental impact statement are provided in Part 1502 of the CEQ regulations.

(c) *Supplemental Environmental Impact Statements.* The Regional Director may at any time supplement a draft or final environmental impact statement. The Regional Director shall prepare a supplement to either the draft or final environmental impact statement when required under the criteria set forth in § 1502.9(2). The Regional Director will prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft or final statement and will introduce the supplement into their formal administrative record.

(d) *Circulation of Environmental Impact Statements.* The Regional Director shall circulate draft and final environmental impact statements as prescribed in § 1502.19 of CEQ regulations. Prior to signing off on a draft or final impact statement, the Regional Director shall obtain the approval of the Environmental Officer and OGC.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

§ 10.11 Environmental information.

Interested persons may contact the Environmental Officer or the Regional Director for information regarding FEMA's compliance with NEPA.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

§ 10.12 Pre-implementation actions.

(a) *Decision-making.* The Regional Director shall ensure that decisions are made in accordance with the policies and procedures of the Act and that the NEPA process is integrated into the decision-making process. Because of the diversity of FEMA, it is not feasible to describe in this part the decision-making process for each of the various FEMA programs. Proposals and actions may be initiated at any level. Similarly, review and approval authority may be exercised at various levels depending on the nature of the action, available funding, and statutory authority. FEMA offices and administrations shall provide further guidance, commensurate with their programs and organization, for integration of environmental considerations into the decision-making process. The Regional Director shall:

(1) Consider all relevant environmental documents in evaluating proposals for Agency action;

(2) Make all relevant environmental documents, comments, and responses part of the record in formal rulemaking or adjudicatory proceedings;

(3) Ensure that all relevant environmental documents, comments and responses accompany the proposal through existing Agency review processes;

(4) Consider only those alternatives encompassed by the range of alternatives discussed in the relevant environmental documents when evaluating proposals for Agency action;

(5) Where an EIS has been prepared, consider the specific alternatives analyzed in the EIS when evaluating the proposal which is the subject of the EIS.

(b) *Record of decision.* In those cases requiring environmental impact statements, the Regional Director at the time of his/her decision, or if appropriate, his/her recommendation to Congress, shall prepare a concise public record of that decision. The record of decision is not intended to be an extensive, detailed document for the purpose of justifying the decision. Rather it is a concise document that sets forth the decision and describes the alternatives and relevant factors considered as specified in 40 CFR 1505.2. The record of decision will normally be less than three pages in length.

(c) *Mitigation.* Throughout the NEPA process, the Regional Director shall consider mitigating measures to avoid or minimize environmental harm and, in particular, harm to or within flood plains and wetlands. Mitigation measures or programs will be identified in the environmental impact statement and made available to decision-makers. Mitigation and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the Regional Director.

(d) *Monitoring.* If a Regional Director determines that monitoring is applicable for established mitigation, a monitoring program will be adopted to assure the mitigation measures are accomplished.

The Regional Director shall provide monitoring information, upon request, as specified in 40 CFR 1505.3. This does not, however, include standing or blanket requests for periodic reporting.

§ 10.13 Emergencies.

In the event of an emergency, the Regional Director may be required to take immediate action with significant environmental impact. The Regional Director shall notify the Environmental Officer of the emergency action at the earliest possible time so that the Environmental Officer may consult with the Council on Environmental Quality. In no event shall any Regional Director delay an emergency action necessary to the preservation of human life for the purpose of complying with the provision of this directive or the CEQ regulations.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

§ 10.14 Flood plains and wetlands.

For any action taken by FEMA in a flood plain or wetland, the provisions of this part are supplemental to, and not instead of, the provisions of the FEMA regulation implementing Executive Order 11988, Flood Plain Management, and Executive Order 11990, Protection of Wetlands (44 CFR Part 9).

PART 11—CLAIMS

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AUTHORITY: 28 U.S.C. 2672, 28 CFR 14.11, 5 U.S.C. 301, Reorganization Plan No. 3 of 1978, (43 FR 41943) E.O. 12127 44 FR 19367, unless otherwise noted.

SOURCE: 45 FR 15930, Mar. 12, 1980, unless otherwise noted.

Subpart A—General

§ 11.1 General collection standards.

The general standards and procedures governing the collection, compromise, termination and referral to the Department of Justice of claims for money and property that are prescribed in the regulations issued jointly by the General Accounting Office and the Department of Justice pursuant to the Federal Claims Collection Act of 1966 (4 CFR Part 101 *et seq.*), apply to the administrative claim collection activities of the Federal Emergency Management Agency (FEMA).

§ 11.2 Delegations of authority.

Any and all claims that arise under Subchapter III of Chapter 83, Chapter 87 and Chapter 88 of Title 5, the United States Code, the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act (58 Stat. 257), and the Lighthouse Service Widow's Annuity Act (64 Stat. 465) shall be referred to the Director of the Bureau of Retirement and Insurance, Office of Personnel Management, for handling. The General Counsel, FEMA shall act on all other claims against FEMA for money and property.

Subpart B—Administrative Claims Under Federal Tort Claims Act

§ 11.10 Scope of regulation.

This regulation applies to claims asserted under the Federal Tort Claims Act against the Federal Emergency Management Agency (FEMA). It does not include any contractor with FEMA.

§ 11.11 Administrative claim; when presented; appropriate FEMA office.

(a) For the purpose of this part, and the provisions of the Federal Tort Claims Act a claim is deemed to have been presented when FEMA receives, at a place designated in paragraph (b) or (c) of this section, an executed "Claim for Damage or Injury," Standard Form 95, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, for personal injury, or for death alleged to have occurred by reason of the incident. A claim which should have been presented to FEMA, but which was mistakenly addressed to or filed with another Federal agency, is deemed to be presented to FEMA as of the date that the claim is received by FEMA. If a claim is mistakenly addressed to or filed with FEMA, the claim shall forthwith be transferred to the appropriate Federal Agency, if ascertainable, or returned to the claimant.

(b) Except as provided in paragraph (c) of this section, a claimant shall mail or deliver his or her claim to the Office of General Counsel, Federal Emergency Management Agency, Washington, DC, 20472.

(c) When a claim is for $200 or less, does not involve a personal injury, and involves a FEMA regional employee, the claimant shall mail or deliver the claim to the Director of the FEMA Regional Office in which is employed the FEMA employee whose negligence or wrongful act or omission is alleged to have caused the loss or injury complained of. The addresses of the Regional Offices of FEMA are set out in Part 2 of this chapter.

(d) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final FEMA action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). Amendments shall be submitted in writing and signed by the claimant or his or her duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, FEMA shall have six months in which to make a final disposition of the claim as amended and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

[45 FR 15930, Mar. 12, 1980, as amended at 48 FR 6711, Feb. 15, 1983; 49 FR 33879, Aug. 27, 1984]

§ 11.12 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his or her authorized agent, or legal representative.

(b) A claim for personal injury may be presented by the injured person or, his or her authorized agent or legal representative.

(c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a claim under applicable State law.

(d) A claim for loss wholly compensated by an insurer with the rights of a subrogee may be presented by the insurer or the insured individually, as their respective interests appear, or jointly. When an insurer presents a claim asserting the rights of a subrogee, he or she shall present with the claim appropriate evidence that he or she has the rights of a subrogee.

(e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title of legal capacity of the person signing, and be accompanied by evidence of his or her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 11.13 Investigations.

FEMA may investigate, or may request any other Federal agency to investigate, a claim filed under this part.

§ 11.14 Administrative claim; evidence and information to be submitted.

(a) *Death.* In support of a claim based on death the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including his or her monthly or yearly salary or earnings (if any), and the duration of his or her last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of the decedent's survivors, including identification of those survivors who were dependent for support on the decedent at the time of his or her death.

(4) Degree of support afforded by the decedent to each survivor dependent on him or her for support at the time of death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills or medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering before death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the amount of damages claimed.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information:

(1) A written report by his or her attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by FEMA or another Federal agency. FEMA shall make available to the claimant a copy of the report of the examining physician on written request by the claimant, if he or she has, on request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees to make available to FEMA any other physician's reports previously or thereafter made of the physical or

mental condition which is the subject matter of the claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment of such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from the employer showing actual time lost from employment, whether he or she is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant may be required to submit the following evidence or information:

(1) Proof of ownership of the property interest which is the subject of the claim.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing on either the responsibility of the United States for the injury to or loss of property or the damages claimed.

§ 11.15 Authority to adjust, determine, compromise and settle.

(a) The General Counsel of FEMA, or a designee of the General Counsel, is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims under the provisions of section 2672 of Title 28, United States Code, and this part.

(b) Notwithstanding the delegation of authority in paragraph (a) of this section, a Regional Director is delegated authority to be exercised in his or her discretion, to consider, ascertain, adjust, determine, compromise, and settle under the provisions of section 2672 of Title 28, United States Code, and this part, any claim for $200 or less which is based on alleged negligence or wrongful act or omission of an employee of the appropriate Region, except when:

(1) There are personal injuries to either Government personnel or individuals not employed by the Government; or

(2) All damage to Government property or to property being used by FEMA, or both, is more than $200, or all damage to non-Government property being used by individuals not employed by the Government is more than $200.

[45 FR 15930, Mar. 12, 1980, as amended at 48 FR 6711, Feb. 15, 1983]

§ 11.16 Limitations on authority.

(a) An award, compromise, or settlement of a claim under this part in excess of $25,000 may be effected only with the advance written approval of the Attorney General or his or her designee. For the purpose of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.

(b) An administrative claim may be adjusted, determined, compromised, or settled under this part only after consultation with the Department of Justice, when, in the opinion of the General Counsel of FEMA or his or her designee:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and FEMA is unable to adjust the third party claim; or

(4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed $25,000.

(c) An administrative claim may be adjusted, determined, compromised or settled under this part only after consultation with the Department of Justice when FEMA is informed or is otherwise aware that the United States or an employee, agent or cost-type contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

§ 11.17 Referral to Department of Justice.

When Department of Justice approval or consultation is required under § 11.16, the referral or request shall be transmitted to the Department of Justice by the General Counsel or his or her designee.

§ 11.18 Final denial of claim.

(a) Final denial of an administrative claim under this part shall be in writing and sent to the claimant, his or her attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the FEMA action, he or she may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.

(b) Prior to the commencement of suit and prior to the expiration of the 6-month period provided in 28 U.S.C. 2401(b), a claimant, his or her duly authorized agent, or legal representative, may file a written request with FEMA for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the FEMA shall have 6 months from the date of filing in which to make a final FEMA disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final FEMA action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

§ 11.19 Action on approved claim.

(a) Payment of a claim approved under this part is contingent on claimant's execution of (1) a "Claim for Damage or Injury," Standard Form 95, or a claims settlement agreement, and (2) a "Voucher for Payment," Standard Form 1145, as appropriate. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his or her attorney as payees, and the check shall be delivered to the attorney, whose address shall appear on the voucher.

(b) Acceptance by the claimant, his or her agenct, or legal representative, of an award, compromise, or settlement made under section 2672 or 2677 of Title 28, United States Code, is final and conclusive on the claimant, his or her agent or legal representative, and any other person on whose behalf or for whose benefit the claim has been presented, and constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

Subpart C—Collection of Debts by the Government Under the Debt Collection Act of 1982

AUTHORITY: 31 U.S.C. 3711 *et seq.*

SOURCE: 49 FR 38267, Sept. 28, 1984, unless otherwise noted.

§ 11.30 Scope of regulations.

(a) *Scope.* This regulation implements policies and procedures used by the Director of the Federal Emergency Management Agency (the Agency or FEMA) to effectuate collections under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*) (the Act). The Act requires the Director or his designee to: (1) Attempt collection of all debts of the United States for money or property arising out of activities of the Agency and (2) authorizes the Director or his designee, for debts not exceeding $20,000 exclusive of interest, to compromise such debts or to suspend or terminate collection action where it appears that no person is liable on such debt or has the present or prospective financial ability to pay a significant sum thereon or that the cost of collecting such debt is likely to exceed the amount of recovery.

(b) *Definitions.* For purposes of this subpart, "office" means one of the following:

(1) Training and Fire Programs Directorate/National Emergency Training Center,

(2) Emergency Operations Directorate,

(3) Federal Insurance Administration,

(4) National Preparedness Programs Directorate,

(5) State and Local Programs and Support Directorate,

(6) Chief of Staff's Office,

(7) Office of Regional Operations, and

(8) Office of Comptroller

(9) United States Fire Administration.

[49 FR 38267, Sept. 28, 1984, as amended at 51 FR 34605, Sept. 30, 1986]

§ 11.31 Adoption of joint standards.

All administrative actions to collect debts arising out of activities of the Agency shall be performed in accordance with the applicable standards prescribed either in 4 CFR Parts 101 through 105 or any standards promulgated jointly by the Attorney General and the Comptroller General. Such standards are adopted as a part of this subpart and are supplemented in this subpart. Additional guidance will be found in the GAO Policy and Procedures Manual for Guidance of Federal Agencies and in the Treasury Fiscal Requirements Manual.

§ 11.32 Subdivision and joining of debts.

(a) A debtor's liability arising from a particular transaction or contract shall be considered as a single debt in determining whether the debt is one not exceeding $20,000 exclusive of interest for the purpose of compromise or termination of collection action. Such a debt may not be subdivided to avoid the monetary ceiling established by the Act.

(b) Joining of two or more single debts in a demand upon a particular debtor for payment totaling more than $20,000 does not preclude compromise or termination of collection action with respect to any one of such debts that do not exceed $20,000, exclusive of interest.

§ 11.33 Authority of offices to attempt collection of debts.

The head of each office and each regional director shall designate a debt collections officer (DCO) who shall attempt to collect in full all debts of the Agency for money or property arising out of the activities of such office. Each DCO shall establish and currently maintain a file with regard to each debt for which collection activities are undertaken. Insofar as it is feasible, debt collection personnel shall have personal interviews or telephone contact with the debtor.

§ 11.34 Referral of debts to the Comptroller, Federal Emergency Management Agency.

(a) Authority of the Comptroller, Federal Emergency Management Agency.

(1) The Comptroller, Federal Emergency Management Agency, is designated the Agency Collections Officer (ACO) and shall exercise the power and perform the duties of the Director to compromise, or to suspend or terminate collection action, after consultation with the Office of General Counsel, on all Agency claims not exceeding $20,000 exclusive of interest, except as provided in § 11.35 and paragraph (b) of this section. In addition, the Comptroller is delegated all authority which may be exercised by the Director, Federal Emergency Management Agency, in relation to:

(i) Disclosure to a consumer reporting agency in accordance with 31 U.S.C. 3711(f),

(ii) Instituting salary offset procedures in accordance with 5 U.S.C. 5514(a),

(iii) Instituting administrative offset procedures in accordance with 31 U.S.C. 3716,

(iv) Charging of interest and penalties in accordance with 31 U.S.C. 3717,

(v) Entering into contracts for collection of debts in accordance with 31 U.S.C. 3718, except that the execution and administration of such contracts is delegated to Federal Emergency Management Agency contracting officers appointed under provisions of 48 CFR 1.603-3,

(vi) Prescribe debt collection procedures and manage debt collection activities within the Agency.

(2) When initial attempts at collection by the office originating such debt have not been fully successful, the debt file shall be forwarded to the ACO for further administrative collection procedures. Debts shall be referred to the ACO well within the applicable statute of limitations (28 U.S.C. 2415 and 2416).

(b) *Exclusions.* There shall be no compromised or terminated collection action with respect to any debt: (1) As to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim; (2) based in whole or in part on conduct in violation of the anti-trust laws; (3) based on tax statutes; or (4) arising from an exception made by the General Accounting Office in the account of an accountable officer. Such a debt shall be promptly referred to the Justice Department, or GAO, as appropriate, after ACO has consulted with the Inspector General and the Office of General Counsel.

[49 FR 38267, Sept. 28, 1984, as amended at 50 FR 40007, Oct. 1, 1985]

§ 11.35 Authority of offices to compromise debts or suspend or terminate collection action.

Where it appears that the cost of collecting a debt of less than $600 will exceed the amount of recovery, the DCO is authorized to compromise the debt or to terminate collection action. Further, DCO's are authorized to compromise a debt or terminate or suspend collection action for debts of less than $600 where:

(a) Debtor cannot be located despite vigorous efforts, including but not limited to, use of skip tracing services, have failed to ascertain the debtor's current address.

(b) Debtor is financially unable to pay in full or in part. DCO's must obtain a financial statement from the debtor in such cases.

(c) The debt is without merit or cannot be substantiated by evidence. In such cases, debt collection officers should secure the advice of counsel. DCO's must document the debt file to show all evidence and reasons for compromise or termination of such debts. The DCO must prepare a narrative report and forward a copy of the report to the ACO.

§ 11.36 Debt collection files.

Each DCO is responsible for obtaining current credit data about each person against whom a debt is pending in his office. The files shall be kept up-to-date by the ACO for claims referred to his/her office for collection. Such credit data may take the form of:

(a) A commercial credit report, showing the debtor's assets and liabilities and his income and expenses,

(b) The individual debtor's own financial statement, executed under penalty for false claim, reflecting his assets and liabilities and his income and expenses, or

(c) An audited balance sheet of a corporate debtor.

The file should also contain a checklist or brief summary of action taken to collect or compromise a debt. All debts files relating to debts owed by individuals are to be safeguarded in accordance with 5 U.S.C. 552a, popularly known as the "Privacy Act of 1974"; 31 U.S.C. 3711 *et seq.*, popularly known at the "Debt Collection Act of 1982"; 44 CFR Part 6 and this subpart. Each DCO is responsible for maintaining files on debtors with information sufficient to enable the Government to effectuate administrative or judicial collection.

(Approved by the Office of Management and Budget under control number 3067-0122)

§ 11.37 [Reserved]

§ 11.38 Annual reports to the Director, Office of Management and Budget, and the Secretary of the Treasury.

(a) The ACO shall gather data on loans, accounts receivable, and debts which are required by 31 U.S.C. 3719 and shall transmit them to the Director, Federal Emergency Management Agency. Such data shall include:

(1) The total amount of loans and accounts receivable owed to the

Agency and when the funds owed to the Agency are due to be repaid;

(2) The total amount of receivables and number of debts that are at least thirty days past due;

(3) Total amount written off as uncollectable, actual, and allowed for;

(4) The rate of interest charged for overdue debts and the amount of interest charged and collected on debts;

(5) The total number of debts and total amount collected;

(6) The number of debts and the total amount of debts referred to the Department of Justice for settlement or collection and the total number of debts and the total amount of debts settled or collected by that Department;

(7) For each program or activity administered by the Agency, the data described in paragraphs (a) (1) through (6) of this section; and

(8) Such other data as the Director, Office of Management and Budget, shall prescribe by regulations issued under authority of 31 U.S.C. 3719.

(b) Data described in paragraph (a) of this section shall be collected on a calendar year basis and transmitted to the Director, FEMA not later than the end of January of the year following the year for which the data described in paragraph (a) of this section, were collected. The Director, FEMA, shall report these data to the Secretary of the Treasury and the Director, Office of Management and Budget in accordance with 31 U.S.C. 3719. If the Secretary of the Treasury and the Director, Office of Management and Budget prescribe, by regulation, a different annual reporting cycle, the Agency's reporting cycle, described in the first sentence of this subsection shall be changed to conform with the cycle prescribed by the Department of the Treasury and Office of Management and Budget regulation.

§ 11.39 Accounting control.

Each office shall process all debt collections through the ACO and report the collection, compromise, suspension, and termination of all debts to that Officer for recording.

§ 11.40 Records retention.

The file of each debt on which administrative collection action has been completed shall be retained by the appropriate officer not less than 1 year after the applicable statute of limitations has run.

§ 11.41 Suspension or revocation of eligibility.

(a) Where a contractor, grantee, or other participant in programs sponsored by the Agency fails to pay his debts to the Agency within a reasonable time after demand, the fact shall be reported by the ACO to the Inspector General and to the Office of Acquisition Management, which shall place such defaulting participant's name on the Agency's list of debarred, suspended and ineligible contractors and grantees. The participant will be so advised. Suspension or revocation of eligibility may be waived in whole or in part in the case of grants for disaster programs administered by FEMA, if the Director FEMA, so directs.

(b) The failure of any surety to honor its obligations in accordance with 6 U.S.C. 11 is to be reported at once to the ACO, who shall so advise the Treasury Department. That Department will notify this Agency when a surety's certificate of authority to do business with the Government has been revoked or forfeited.

§ 11.42 Demand for payment of debts.

(a) *Initial demand.* An initial demand shall be made in writing and sent by certified mail, return receipt requested, to the debtor identifying the debt, and advising that the full amount due should be paid by a specified due date, not less than 30 days from mailing of the demand. If the debtor is other than a State or local government or an agency of the United States, the initial demand notice shall also advise the debtor that interest, calculated at rates provided by 31 U.S.C. 3717(a), shall be assessed if the debt is not paid in full by the due date. Interest shall be charged on the outstanding balance due at the rate prescribed by the Secretary of the Treasury in accordance with 31 U.S.C. 3717(a), beginning on the date that the first notice was mailed to the debtor. The debtor shall also be advised that if any portion of the debt remains unpaid or if a repayment schedule satisfactory to the Agency, has not been arranged 90 days after the due date, then additional penalties prescribed in 31 U.S.C. 3717(e)(2) of 6 per centum per annum shall be charged on the unpaid balance.

(b) *Subsequent demands.* If the debt is not paid by the due date or if a repayment program acceptable to the ACO, has not been arranged with the debtor, then an initial demand shall be made followed by two progressively stronger written demands at not more than 30-day intervals, will be made unless a response to the initial or subsequent demands indicates that further demands would be futile and that the debtor's response does not require rebuttal.

(c) *Debts arising from contracts executed on or before October 25, 1982.* If the claim arises from a contract executed before October 25, 1982, then the initial and subsequent demands shall mention nothing about the imposition of penalties or interest, prior to rendering of judgment by a court of competent jurisdiction.

(d) *Waiver of subsequent written demands.* If there is valid reason, the sending of second and third demand letters may be waived. Such reasons may include, but are not be limited to, statute of limitations being about to run.

§ 11.43 Collection from non-Government entities by administrative offset.

(a) *General.* The Agency Collections Officer may effectuate collection of debts owed by persons or entities, other than Federal agencies or State or local governments, by means of offsets against monies due from the United States under provisions of 31 U.S.C. 3716 and the procedures set forth below. The procedures, prescribed by this subsection, shall not be used if the debtor has executed a written agreement, satisfactory to the ACO, for the payment of the debt so long as the debtor adheres to the provisions of the agreement. Before utilizing the procedures of this section, the ACO, or his designee, shall examine the debt to see whether the likelihood of collecting such a debt and the best interests of the United States justify the use of administrative offset. If the debt is over 6 years old but is not 10 years old, the ACO shall examine the debt and decide whether utilizing these procedures is cost effective. Further, administrative offset procedures shall not be used on debts over six years after they arise unless the facts material to the debt were not previously known to the Government and could not have been reasonably discovered by the person responsible for collecting the debt.

(b) *Written notice.* After the ACO or his designee has examined the debt under procedures set forth in paragraph (a) of this section, a notice shall be sent by certified mail, return receipt requested, to the debtor advising him of:

(1) Nature and amount of the debt determined by the Agency to be due, and of intention to collect by administrative offset,

(2) Rights available under this section,

(3) Opportunity to inspect and copy the records relating to the debt,

(4) Opportunity for review within the Agency with respect to the debt, and

(5) Opportunity to enter into an agreement with the ACO with respect to the debt. Such agreement may include voluntary but nonrevocable withholding of monies due from the United States to the debtor.

(c) *Review within the Agency.* The debtor may request, within fifteen calendar days after receipt of the written notice specified in paragraph (b) of this section, review within the Agency as to the existence or amount of the debt or terms of repayment. The review shall be conducted by a member of the staff of the Office of General Counsel not involved in collection of debts under the Agency program which gave rise to the debt. The staff member, with the concurrence of the ACO, may determine that no debt is due, the amount of the debts should be reduced, that terms of repayment should be set, or that the demanded amount should be paid in full. The staff member may negotiate with the debtor concerning a written agreement for the repayment of the debt. However, such agreement shall be subject to approval by the ACO.

(d) If no written agreement is executed, if the debtor does not request review within the Agency, or if the review within the Agency determines that a debt is due, then administrative offset against monies payable by the United States shall be effectuated in accordance with appropriate regulations. Efforts shall be made to coordinate offset collections with other agencies, including use of the Army Holdup List. However, if a statute either prohibits or explicitly provides for collection through administrative offset of the debt or the type of debt involved then the provisions of that statute rather than the provisions of this section shall be used for such offset.

(e) If the debtor has a judgment against the United States, then notice shall be provided to the General Accounting Office for offset in accordance with 31 U.S.C. 3728.

§ 11.44 Collection of debts from Federal agencies or State or local government by administrative offset.

Claims for debts against Federal agencies and against State or local governments may be collected from monies due from the United States to the agency or government utilizing offset principles of common law. See *U.S.* v. *Munsey Trust Co.*, 332 U.S. 234 (1947). Prior to utilizing this procedure for collection, the Agency Collections Officer shall notify the debtor agency or State or local government of the nature of the debt, the amount due and of the Agency's intent to collect interest on unpaid balances due. Interest shall accumulate at rates prescribed by the Department of the Treasury pursuant to 31 U.S.C. 3717(a). The notice shall also advise the debtor Federal agency or State or local government of the right to inspect and copy records relating to the debt and shall give the name, business address and telephone number of the official having cognizance over the debt. A bill for collection shall be sent to the Federal agency or to the State or local government.

§ 11.45 Collection by salary offset.

(a) *General.* Where an individual is an employee of the Federal Government or a member of the Armed Forces or a reserve component of the Armed Forces or is receiving retired or retainer pay for service as a Federal employee and where the individual is indebted to the United States and where the individual fails to satisfy his indebtedness voluntarily after the Agency has made demands in accordance with § 11.42 of this part, the ACO may institute collection action by salary or pay offset procedures in accordance with 5 U.S.C. 5514, 5 CFR 550.1101 through 550.1106 and the procedures described below.

(b) *Notice to debtor.* At least 30 days prior to initiating salary offset, the ACO or his designee shall send notice by certified mail, return receipt requested, to the debtor advising him of:

(1) Nature, origin and amount of indebtedness determined by the Agency to be due, the date that the debt was due, and a statement that FEMA has complied with applicable statutes, regulations and procedures,

(2) Agency intention to initiate proceedings to collect the debt by deductions from pay,

(3) Rights available under 5 U.S.C. 5514(a),

(4) Debtor's opportunity to inspect and copy Government records relating to the debt,

(5) Opportunity to enter into a written agreement, under terms satisfactory to the ACO, to establish terms for the repayment of the debt, and

(6) Opportunity for a hearing, described in paragraph (c) of this section, concerning the existence or the amount of the debt or, if no repayment schedule has been established (in accordance with paragraph (b)(1) of this section) concerning the terms of the repayment schedule,

(7) If there is a statutory provision authorizing waiver, remission, or forgiveness of the debt due the United States; the individual will be notified as to:

(i) Nature of the provision,

(ii) Explanation of the conditions under which the waiver shall be granted,

(iii) Reasonable opportunity to request a waiver,

(iv) If waiver is requested, then a written response will be given to the request.

(c) *Hearing.* The debtor shall file a written petition for hearing or for a waiver (if applicable) on or before the twentieth calendar day after receipt of notice, referred to in paragraph (b) of this section, addressed to the Agency Collections Officer, Federal Emergency Management Agency, Washington, DC 20472. The postmark or receipt date, if mail is not used, shall establish the date of petition.

(1) The hearing official shall be an Administrative Law Judge or a person of grade GS/GM-14 or higher, not under the supervision or control of the Director, FEMA. The Director may enter into interagency support agreements with other Federal agencies or departments for providing hearing officials.

(2) The hearing shall be informal but the debtor shall be given the basic safeguards of due process. The debtor shall have the right to be represented by an attorney. A summary record shall be made of the proceedings at the hearing. The hearing shall, insofar as possible, be conducted at a location and time convenient to the debtor.

(3) As soon as practicable, but in no event later than 60 days after the filing of the petition for hearing, the hearing official shall render a final decision. If a hearing is requested, no further action shall be taken to collect the debt until the final decision is rendered.

(d) *Amount deducted.* The amount deducted from pay for any period shall not exceed 15 percent of disposable pay. However, the debtor may voluntarily agree to the deduction of a greater amount of pay. Disposable pay means that part of pay of any individual remainng after the deduction from those earnings of any amounts required by law to be withheld. However, installment payments of less than $25.00 will be accepted only in the most unusual circumstances.

(e) Procedural requirements specified in paragraph (c) of this section shall not be used in cases of collections of such obligations as changes in coverage under a Federal benefits program or resulting from ministerial adjustments pay and allowances which cannot be placed in effect immediately because of normal processing delays.

(f) When an employee, who is subject to salary offset in accordance with this section and who is making repayment in installments, finds that total repayment of the debt is about to be made, then the employee must notify the employee's payroll office, at least two pay periods before the final payment, that final payment is being made.

[49 FR 38267, Sept. 28, 1984, as amended at 50 FR 40007, Oct. 1, 1985]

§ 11.46 Liquidation of collateral.

Where FEMA holds security or collateral that may be liquidated and the proceeds applied on debts due it through the exercise of a power of sale in the security instrument or a nonjudicial foreclosure, such procedures should be followed if the debtor fails to pay his debt within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or special circumstances require judicial foreclosure.

§ 11.47 Collection in installments.

Debts with accrued interest and penalties should be collected in full in one lump sum whenever this is possible. However, if the debtor is financially unable to pay the indebtedness in one lump sum, payment with applicable interest may be accepted in regular installments in accordance with a written agreement approved by the ACO or his designee. If possible, installment payments shall be sufficiently large to complete collection in the three years. Installment payments should not be less than $50.00 per month unless there are most unusual circumstances. The Agency may require the debtor to execute a confess-judgment, negotiable note for the amount of the indebtedness. The ACO or DCO may require the debtor to provide a statement as to financial condition.

§ 11.48 Interest and penalties.

(a) *Interest.* Interest shall be charged on the outstanding balance due on debts due the United States at the rate published by the Secretary of the Treasury under provisions of 31 U.S.C. 3717(a). The interest rate in effect at the time that the debt becomes due shall be the rate charged throughout the duration of the debt until the debt is paid in full. The interest shall run from following dates:

(1) If the initial demand for the debt was mailed on or after October 25, 1982, then the date of mailing to the debtor (using the most current address available to the ACO), or

(2) If the initial demand for the debt was mailed before October 25, 1982, then from the date that a demand letter was mailed after October 25, 1982.

(b) *Exceptions to interest charges.* However, no interest, described in paragraph (a) of this section, shall be charged if:

(1) The amount due is paid within 30 days of the mailing of the demand. However, the ACO for good cause shown, as documented by a memorandum in the debt collection file, may extend this 30 day period, or

(2) The applicable statute, regulation required by statute, loan agreement or contract either prohibit the charging of interest or explicitly fix interest or charges which apply to the debt involved.

(c) *Penalty charges.* Except in the situations described in paragraph (b) of this section, a penalty charge of 6 per centum per annum shall be charged on the unpaid portion of the principal amount of the debt which remains unpaid 90 days after the date described in paragraph (a) of this section, if no repayment schedule, satisfactory to the ACO or the DCO, has been agreed upon.

(d) *Processing and handling costs for delinquent debts.* The debtor shall also pay the extraordinary costs of processing delinquent debts. Extraordinary costs are deemed to include, but not be limited to, costs of employing commercial firms to locate debtor, costs, not to exceed one-third of the debt due, of employing contractors for collection services, costs of selling collateral or property to satisfy the debt, etc.

(e) *Standards for waiver of interest, penalties and charges.* (1) Interest, penalties and delinquent debts charges may be waived, either in whole or in part, if the ACO or his designee finds that:

(i) The debtor is financially unable to pay, (ii) the Agency's enforcement policy will be adequately served if there is a waiver in whole or in part or (iii) the debtor has shown good cause, satisfactory to the ACO, that the claim was not timely paid. If waiver is granted, the administrative claims file shall be adequately documented.

(2) The ACO, with the concurrence of the General Counsel, may waive interest, penalties and administrative costs based on criteria set forth in paragraphs (e) (3) through (5) of this section. When such charges are waived, the Agency Collections Officer shall prepare a memorandum for the file stating the reasons for not collecting such charges.

(3) If the costs of collection exceed the projected recovery then interest, penalties and administrative costs may be waived.

(4) If the debtor has a *bona fide* dispute as to facts or has raised valid legal issues, then charges may be waived.

(5) If it is determined that debtor is unable to pay, as shown by complete and sworn statements as to his assets and projected income, then charges may be waived. Such a determination shall be made by ACO if the debt (excluding of interest and penalties) is $600, or more. If the debt (exclusive of interest and penalties) is less than $600.00, then such a determination shall be made by the DCO.

(f) *Nonapplicability.* The provisions of this section do not apply to debts owned by Federal agencies and State and local governments. Interest on such debts owed by such entities shall be charged in accordance with applicable statute or, if nonexistent, then in accordance with principles of common law.

(g) *Installment collections.* When a debt is paid in installments, the payments shall first be applied to collection charges and penalty charges, second to accrued interest and third to outstanding principal.

(h) *Collection of interest while an appeal is pending.* If the debtor notes an appeal either as to the existence of or the amount of the debt, interest may be waived or suspended by the ACO under the following circumstances.

(1) In the case of a state or local government, interest shall be charged only on those amounts found due after the appeal process is completed and shall run from the time that the bill for collection was issued. However, if the State or local government can show that its taxes and revenues will not be sufficient to meet essential governmental expenses, then the ACO may waive the imposition of interest during the pendency of the appeal. However, the State or local government must submit to the ACO such financial and accounting data which will establish governmental hardship as the ACO determines to be necessary to arrive at a decision concerning such waiver of interest.

(2) In the case of an individual or a non-governmental entity which is noting an appeal which is *mandated* by law, then the imposition of interest and penalties is waived while the appeal is pending from the time that the appeal is noted until the Agency has taken final action on the appeal.

(3) When an individual or a non-governmental entity notes an appeal which is *permissive* under statute or regulation, then interest and penalties may be waived under the following circumstances:

(i) If the amount of the debt, exclusive of interest and penalties, is less than $5,000, then interest and penalties shall be waived from the time that the appeal is noted until the Agency takes final action on the appeal.

(ii) If the amount of the debt, exclusive of interest and penalties, is $5,000 or more then the imposition of penalties and interest may be waived if there is no fault or lack of good faith on the part of the debtor and if the amount of interest is so high, in relation to affordable installments repayments that the debt would never be repaid. In determining whether interest and penalties should be waived, the ACO or DCO may demand that the debtor provide such financial data as he or she may demand.

§ 11.49 Omission not a defense.

Failure to comply with any standard prescribed in 4 CFR Chapter 11, or in this subpart shall not be available as a defense to any debtor.

§ 11.50 Standards for compromise of debts.

(a) *Compromise.* (1) A debt may be compromised if:

(i) The debtor is not able to pay the full amount within a reasonable period of time;

(ii) If the debtor refuses to pay the debt in full and the Agency is unable to enforce collection within a reasonable time by enforced collection proceeding;

(iii) If there is real doubt concerning the Agency's ability to prove its case in court for the full amount claimed;

(iv) If the cost of collecting the debt does not justify the enforced collection of the full amount;

(v) If, in connection with statutory penalties or forfeitures established as an aid to enforcement and to compel compliance, the Agency's enforcement policy will be adequately served by acceptance of the sum to be agreed upon; or

(vi) For other reasons deemed valid by the ACO after consultation with the General Counsel. The Standards set forth in 4 CFR 103.3 through 103.9 should be used.

(2) *Inability to pay.* If a debtor is unable to pay the full amount of the debt within a reasonable time or if the debtor refuses to pay and the Government is unable to collect the amount of the debt through enforcement proceedings then the Agency may compromise the claim either in whole or in part. The ACO may require that the debtor provide sworn information as to assets, actual or potential sources of income, liabilities and other financial data. The standards set forth in the GAO, Department of Justice guidelines prescribed in 4 CFR 103.2 should be used.

(3) Compromises payable in installments will not normally be permitted

by the Agency only if the debtor shows that full, immediate payment is impossible.

(4) *Litigative probabilities.* If there is a *bona fide* dispute as to facts or if there is a valid legal defense raised which may limit or eliminate the possibility of recovery, then the Agency Collections Officer may, after receiving a legal analysis from the General Counsel, compromise the action in whole or in part.

(b) *Documentary evidence of compromise.* No compromise of a debt shall be final or binding on the Agency unless it is in writing and signed by the appropriate officer who has authority to compromise the claim pursuant to this subpart.

(c) *Authority.* Only the ACO may compromise debits of $600.00 or more. Debts of less than $600.00 may be compromised by the DCO. Debts exceeding $20,000 may be compromised only after approval by the Department of Justice in accordance with 4 CFR 101.4(a).

§ 11.51 Standards for suspension or termination of collection action.

(a) *Suspension of collection action.* (1) Collection action shall be suspended temporarily on a debt when the debtor cannot be located after diligent effort but there is reason to believe that future collection action may be sufficently productive to justify periodic review and action on the claim, making consideration for its size and the amount which may be realized. Collection action may be suspended temporarily on a debt when the debtor owns no subsantial equity in realty and is presently unable to make payment on the Agency's debt or effect a compromise, but his future prospects justify retention of the claim for periodic review and action, and, (i) the applicable statute of limitations has been tolled or started anew, or (ii) future collection can be effected by offset notwithstanding the statute of limitations. Suspension as to a particular debtor should not defer the early liquidation of security for the debt. Standards prescribed in 4 CFR Part 104 shall be used in making determinations as to suspension as termination of collection efforts.

(2) *No substantial recovery possible.* If, at the time that collection is attempted, debtor is without assets or actual or potential income or if the debtor may have exemptions under the bankruptcy laws which make enforced collection of the debt not cost-effective, then collection action may be suspended. However, interest and other charges will accumulate unless waived.

(3) *Debtor cannot be located.* If the debtor cannot be located or is outside the United States, then collection action may be suspended until the debtor is located. The statute of limitations will be tolled during those periods that the debtor is outside the United States.

(b) *Termination of collection action.* (1) Collection action may be terminated and the Agency file closed for the following reasons: (i) No substantial amount can be collected; (ii) the debtor cannot be located; (iii) the cost will exceed recovery; (iv) the claim is legally without merit; or (v) the claim cannot be substantiated by evidence.

(2) *No substantial recovery possible.* If there is little likelihood that collection efforts will result in any substantial recovery, then collection efforts may be terminated. Costs of recovery may be a factor in determining whether any recovery would be substantial. Normally, costs of recovery would be more important in cases of small debts than in cases of large ones.

(3) *Debtor cannot be located.* Every effort, including, but not limited to, use of governmental records, Internal Revenue Service taxpayer information, private contractor skip tracer and credit agencies, shall be made to locate debtors in advance of the runnning of the statute of limitations. If the debtor cannot be located, then the Agency Collections Officer may determine, with the concurrence of the General Counsel, that collection efforts may be terminated.

(4) *Litigative possibilities.* The criteria and procedures of § 11.50(a)(3) of this subpart may be used to terminate collection efforts if it appears unlikely that the Government would prevail if it were to litigate collection of the debt.

(c) *Debts exceeding $20,000.* No debt exceeding $20,000 (exclusive of interest and penalties) shall be compromised by FEMA unless the proposed compromise has been referred to the Department of Justice in accordance with 4 CFR 101.4(a). Such proposed compromises shall be referred to the Office of General Counsel, which shall review the proposal before being forwarded to the Department of Justice. However, where a debt claim is of no legal merit, the ACO may compromise such a debt without referral to the Department of Justice but only with the concurrence of the Office of General Counsel.

(d) *Enforcement policy.* Statutory penalties and forfeitures are used as an aid to secure compliance with FEMA requirements and to compel payment. These may be waived if the Agency's enforcement policy in terms of securing payment and securing compliance with FEMA regulations would be sreved by accepting a sum agreed upon. Mere accidental or technical violations will be dealt with less severly than willful or substantial violations.

§ 11.52 Referral of delinquent debtors to consumer reporting agencies.

(a) *General.* This section implements 31 U.S.C. 3711(f) concerning reporting of debtors having overdue debts to consumer reporting agencies.

(b) *Procedures.* When a debt is unpaid for 120 days after the initial demand letter has been sent and where the debtor has not repaid the amount due nor has the debtor entered into an agreement for repayment satisfactory to the ACO or his designee, or the debt is not subject to administrative offset (as described in § 11.43), the ACO may report the claim to consumer reporting agencies f:

(1) The Agency Collections Officer r his designee has determined that he debt is overdue,

(2) Notice has been sent certified mail, return receipt requested, to debtor informing him that:

(i) Payment of the debt is overdue,

(ii) The Agency intends to disclose he debtor's debt records to a consumer reporting agency within a stated period, not less than 60 days after the mailing of such debt,

(iii) Specified items of information being released shall be listed in the notice. Such items will normally include the debtor's name, taxpayer account number, last known address, other information necessary to establish the identity of the individual, the nature, amount and status of the outstanding claim, and programs under which the claim arose, and

(iv) The debtor has a right to a full explanation of the debt, to dispute any information in the records concerning the debt, and to have an administrative review. If the debtor petitions for administrative review, then no further action on referring debtor information to consumer reporting agencies shall be undertaken until the administrative review is completed.

(c) *Administrative review.* The debtor shall send with his petition arguments in writing and documentary evidence to the Agency Collection Officer, Office of the Comproller, Federal Emergency Management Agency, Washington, DC 20472. These shall be reviewed by the ACO or an official designated by him. The reviewing official shall prepare a reply, within 60 days after receipt of the petition, either accepting the debtor's assertions in whole or is part or rejecting them. If the debtor's assertions are rejected in whole or in part, then the debt data, described in paragraph (b)(2)(iii) of this section (with correction made as indicated by the reviewing official) shall be sent to consumer reporting agencies.

(d) *Information released.* Information released to consumer reporting agencies shall be limited to the following items:

(1) Name of debtor, address, taxpayer identification number, and other information necessary to establish the identity of the debtor,

(2) Amount, status and history of the debt and

(3) Program under which the debt arose.

§ 11.53 Securing debtor addresses from the Department of Treasury.

(a) If the ACO is unable to obtain a current address for the debtor, then a written request shall be sent to the Secretary of the Treasury asking for the debtor's most current mailing address from the Department of the Treasury taxpayer identity information files for Agency use in collecting claims. Any information so received from the Secretary of the Treausury shall be safeguarded in accordance with provisions of 26 U.S.C. 6103(p)(4) and 26 CFR Parts 301 and 601.

(b) Taxpayer identity information (which includes IRS current address and social security number) shall be released to consumer reporting agencies only for the purpose of preparation of commercial credit reports for use by Federal agencies in accordance with section 3 of the Debt Collection Act (31 U.S.C. 3711(f)). A notice to this effect shall be placed on each page containing taxpayer identitiy information which is sent to consumer reporting agencies.

§ 11.54 Contracts with debt collection agencies.

(a) *General.* The ACO may request the Agency's Office of Acquisition Managment to enter into contracts for the recovery of indebtedness owed to the United States arising under programs administered by Agency. Such contracts may be entered into with persons or organizations and shall be handled in accordance with the Federal Procurement Regulations (48 CFR Part 44) and the Agency's procurement regulation (48 CFR Part 44).

(b) *Debt collection contract provisions.* Contracts entered into under authority of this secion shall have provisions relating to:

(1) Protection of data relating to individuals which shall not be less than that provided under the terms of the Privacy Act (5 U.S.C. 552a).

(2) Protection of data derived from Department of the Treasury taxpayer identity information files shall in accordance with 26 U.S.C. 6103(p)(4) and 26 CFR Parts 301 and 601.

(3) Authority to terminate collection action, settle or compromise claims shall remain with the Director of the Agency or the ACO rather than with the Contracting Officer.

(4) Resolution of disputes relating to the claim shall remain with the ACO or the Agency Director. Resolution of disputes arising under the contract or with the contractor shall remain with the Agency Contracting Officer who shall handle such disputes in accordance with the Contract Disputes Act (Pub. L. 95-563).

(5) Judicial enforcement of the claim shall be handled by the U.S. Department of Justice.

(6) The contractor shall adhere to Federal and State laws and regulations pertaining to debt collection practices including the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*)

(7) Contracts, entered into under provisions of this section, shall be subject to competition to the maximum practicable extent.

(8) The contractor shall be required to strictly account for all amounts collected.

(c) *Collection fees.* Contracts entered into under this section may provide that fees payable to the contractor may be paid only from the amounts collected from the debtor as determined by the Contracting Officer. However, such contracts shall be funded only from funds available for the time period in which the contract is executed.

(Approved by the Office of Management and Budget under control number 3067-0122)

[49 FR 38267, Sept. 28, 1984; 50 FR 40007, Oct. 1, 1985; 50 FR 42023, Oct. 17, 1985; 51 FR 34605, Sept. 30, 1986]

§ 11.55 Referral to GAO or Justice Department.

(a) *Referral to the Department of Justice.* With the exception of debts described in paragraph (b), of this section, those debts which cannot be collected or compromised or terminated in accordance with 3 CFR Parts 103 and 104 and §§ 11.50 and 11.51, shall be referred to the Department of Justice for collection action. All such referrals shall be done by the ACO, who shall consult with the FEMA Office of General Counsel. The referral shall be accompanied by a copy of the complete debt collection file. In addition, the following information shall be provided:

(1) Current address of debtor. Effort shall be made to locate the debtor if he is missing. If the debtor is a corporation, then the name and address of the agent upon whom service of process may be made, shall be provided.

(2) Credit data which may be in the form of a credit report or a statement, under oath, of the debtor's assets and liabilities.

(3) History of prior collection actions.

(4) Data required by the GAO Claims Collection Litigation Report form. If the debt is less than $600, exclusive of interest, then referral shall not be made to the Department of Justice, except in unusual cases.

(b) *Referral to the General Accounting Office.* Debts arising from audits exceptions taken by the General Accounting Office (GAO) shall be referred to GAO before referring such debts to the Department of Justice. If the merits of the debt or the propriety of a proposed compromise, suspension or termination are in doubt, then the matter should be referred to GAO prior to referral to the Department of Justice.

(c) *Prompt referral.* Such referrals shall be made as early as possible consistent with aggressive collection action, and, in any event, well within the statute of limitation for bringing suit against the debtor. Ordinarily, debt collection referrals will be made to the Department of Justice within six months after FEMA has determined that a debt is owing in an amount certain.

§ 11.56 Analysis of costs.

The ACO shall provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and in various dollar ranges should be used to compare the cost effectiveness of alternative collection techniques, establish guidelines with respect to the points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating offers in compromise, and establish minimum debt amounts below which collection efforts need not be taken. Cost and recovery data should also be useful in justifying adequate resources for an effective collection action.

§ 11.57 Automation.

The ACO shall work to automate the Agency's debt collection operations to the extent that it is cost effective and feasible.

§ 11.58 Prevention of overpayments, delinquencies, and defaults.

The ACO shall establish procedures to identify the causes of overpayments, delinquencies, and defaults and the corrective actions needed. All debts or loans, when first established, may be reported to commercial credit bureaus.

§ 11.59 Office of General Counsel.

The Office of General Counsel shall provide legal advice on claims collection matters to all debt collection officers and the Agency Collection Officer, as needed.

§ 11.60 Sale of debts due the United States arising under programs administered by the Agency.

Where debts due the United States arising under programs administered by the Agency prove to be uncollectable or unresolvable through procedures described in §§ 11.33 through 11.35, 11.41 through 11.48, and 11.50 through 11.55 and where the stated value of the debt is less than $20,000, excluding penalties and interest, then the Agency may contract to sell or assign such debts under competitive sales procedures. The Agency may sell or assign debts valued at $600, or less, excluding penalties and interest, after decision by the ACO. Where the debt exceeds $600, but is less than $20,000, exclusive of interest and penalties, the Agency may sell or assign such debts only after the ACO has coordinated such action with the Department of Justice and the General Accounting Office.

Subpart D—Personnel Claims Regulations

AUTHORITY: 31 U.S.C. 3721.

SOURCE: 50 FR 8112, Feb. 28, 1985.

§ 11.70 Scope and purpose.

(a) The Director, Federal Emergency Management Agency (FEMA), is authorized by 31 U.S.C. 3721 to settle and pay (including replacement in kind) claims of officers and employees of FEMA, amounting to not more than $25,000 for damage to or loss of personal property incident to their service. Property may be replaced in-kind at the option of the Government. Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquisition and use of the property, and whether possession or use by the claimant at the time of damage or loss was incident to service.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for damage or loss is made only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individuals possess excessive quantities of items, or expensive items, they should have such property privately insured. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim under this subpart.

§ 11.71 Claimants.

(a) A claim pursuant to this subpart may only be made by: (1) An employee of FEMA; (2) a former employee of FEMA whose claim arises out of an incident occurring before his/her separation from FEMA; (3) survivors of a person named in paragraph (a) (1) or (2) of this section, in the following order of precedence: (i) Spouse; (ii) children; (iii) father or mother, or both or (iv) brothers or sisters, or both; (4) the authorized agent or legal representative of a person named in paragraphs (a) (1), (2), and (3) of this section.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 11.72 Time limitations.

(a) A claim under this part may be allowed only if it is in writing, specifies a sum certain and is received in the Office of General Counsel, Federal Emergency Management Agency, Washington, DC 20472: (1) Within 2 years after it accrues; (2) or if it cannot be filed within the time limits of paragraph (a)(1) of this section because it accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after the claim accrues, when the claimant shows good cause, the claim may be filed within 2 years after the cause ceases to exist but not more than 2 years after termination of the war or armed conflict.

(b) For purposes of this subpart, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

§ 11.73 Allowable claims.

(a) A claim may be allowed only if: (1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his/her agent, the members of his/her family, or his/her private employee (the standard to be applied is that of reasonable care under the circumstances); and (2) the possession of the property lost or damaged and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and (3) the claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section, and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with FEMA may be considered and allowed. The following are examples of the principal types of claims which may be allowed, unless excluded by § 11.74.

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 states or the District of Columbia that were assigned to the claimant or otherwise provided in-kind by the United States; or

(ii) Any warehouse, office, working area, or other place (except quarters) authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Motor vehicles.* Claims may be allowed for automobiles and other motor vehicles damaged or lost by overseas shipments provided by the Government. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels, or by Government bills of lading on commercial vessels, and includes storage, unloading, and offloading incident thereto. Other claims for damage to or loss of automobiles and other major vehicles may be allowed when use of the vehicles on a nonreimbursable basis was required by the claimant's supervisor, but these claims shall be limited to a maximum of $1,000.00.

(4) *Mobile homes.* Claims may be allowed for damage to or loss of mobile homes and their content under the provisions of paragraph (c)(2) of this section. Claims for structural damage to mobile homes resulting from such structural damage must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to or loss of tires mounted on mobile homes may be allowed only in cases of collision, theft, or vandalism.

(5) *Money.* Claims for money in an amount that is determined to be reasonable for the claimant to possess at the time of the loss are payable:

(i) Where personal funds were accepted by responsible Government personnel with apparent authority to receive them for safekeeping, deposit, transmittal, or other authorized disposition, but were neither applied as directed by the owner nor returned;

(ii) When lost incident to a marine or aircraft disaster;

(iii) When lost by fire, flood, hurricane, or other natural disaster;

(iv) When stolen from the quarters of the claimant where it is conclusively shown that the money was in a locked container and that the quarters themselves were locked. Exceptions to the foregoing "double lock" rule are permitted when the adjudicating authority determines that the theft loss was not caused wholly or partly by the negligent or wrongful act of the claimant, their agent, or their employee. The adjudicating authority should use the test of whether the claimant did their best under the circumstances to protect the property; or

(v) When taken by force from the claimant's person.

(6) *Clothing.* Claims may be allowed for clothing and accessories customarily worn on the person which are damaged or lost:

(i) During the performance of official duties in an unusual or extraordinary-risk situation;

(ii) In cases involving emergency action required by natural disaster such as fire, flood, hurricane, or by enemy or other belligerent action;

(iii) In cases involving faulty equipment or defective furniture maintained by the Government and used by the claimant required by the job situation; or

(iv) When using a motor vehicle.

(7) *Property used for benefit of the Government.* Claims may be allowed for damage to or loss of property (except motor vehicles, see §§ 11.73(c)(3) and 11.74(b)(13)) used for the benefit of the Government at the request of, or with the knowledge and consent of, superior authority or by reason of necessity.

(8) *Enemy action or public service.* Claims may be allowed for damage to or loss of property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nation:

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(9) *Marine or aircraft disaster.* Claims may be allowed for personal property damaged or lost as a result of marine or aircraft disaster or accident.

(10) *Government property.* Claims may be allowed for property owned by the United States only when the claimant is financially responsible to an agency of the Government other than FEMA.

(11) *Borrowed property.* Claims may be allowed for borrowed property that has been damaged or lost.

(12)(i) A claim against the Government may be made for not more than $40,000 by an officer or employee of the agency for damage to, or loss of, personal property in a foreign country that was incurred incident to service, and—

(A) The officer, or employee was evacuated from the country on a recommendation or order of the Secretary of State or other competent authority that was made in responding to an incident of political unrest or hostile act by people in that country, and the damage or loss resulted from the evacuation, incident, or hostile act; or

(B) The damage or loss resulted from a hostile act directed against the Government or its officers, or employees.

(ii) On paying the claim under this section, the Government is subrogated for the amount of the payment to a right or claim that the claimant may have against the foreign country for the damage or loss for which the Government made the payment.

(iii) Amounts may be obligated or expended for claims under this section only to the extent provided in advance in appropriation laws.

§ 11.74 Claims not allowed.

(a) A claim is not allowable if:

(1) The damage or loss was caused wholly or partly by the negligent or wrongful act of the claimant, claimant's agent, claimant's employee, or a member of claimant's family;

(2) The damage or loss occurred in quarters occupied by the claimant within the 50 states and the District of Columbia that were not assigned to the claimant or otherwise provided in-kind by the United States;

(3) Possession of the property lost or damaged was not incident to service or not reasonable or proper under the circumstances.

(b) In addition to claims falling within the categories of paragraph (a) of this section, the following are examples of claims which are not payable:

(1) *Claims not incident to service.* Claims which arose during the conduct of personal business are not payable.

(2) *Subrogation claims.* Claims based upon payment or other consideration to a proper claimant are not payable.

(3) *Assigned claims.* Claims based upon assignment of a claim by a proper claimant are not payable.

(4) *Conditional vendor claims.* Claims asserted by or on behalf of a conditional vendor are not payable.

(5) *Claims by improper claimants.* Claims by persons not designated in § 11.71 are not payable.

(6) *Articles of extraordinary value.* Claims are not payable for valuable or expensive articles, such as cameras, watches, jewelry, furs, or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, provided that reasonable protection or security measures have been taken, by the claimant.

(7) *Articles acquired for other persons.* Claims are not payable for articles intended directly or indirectly for persons other than the claimant or members of the claimants' immediate household. This prohibition includes articles acquired at the request of others and articles for sale.

(8) *Property used for business.* Claims are not payable for property normally used for business or profit.

(9) *Unserviceable property.* Claims are not payable for wornout or unserviceable property.

(10) *Violation of law or directive.* Claims are not payable for property acquired, possessed, or transported in violation of law, regulation, or other directive. This does not apply to limitation imposed on the weight of shipments of household goods.

(11) *Intangible property.* Claims are not payable for intangible property such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(12) *Government property.* Claims are not payable for property owned by the United States unless the claimant is financially responsible for the property to an agency of the Government other than FEMA.

(13) *Motor vehicles.* Claims for motor vehicles, except as provided for by § 11.73(c)(3), will ordinarily not be paid. However, in exceptional cases, meritorious claims for damage to or loss of motor vehicles, limited to a maximum of $1,000.00, may be recommended to the Office of General Counsel for consideration and approval for payment.

(14) *Enemy property.* Claims are not payable for enemy property, including war trophies.

(15) *Losses recoverable from carrier, insurer or contractor.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from a carrier, insurer or under contract except as permitted under § 11.75.

(16) *Fees for estimates.* Claims are not normally payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under this subpart. However, where, in the opinion of the adjudicating authority, the claimant could not obtain an estimate without paying a fee, such a claim may be considered in an amount reasonable in relation to the value for the cost of repairs of the articles involved, provided that the evidence furnished clearly indicates that the amount of the fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(17) *Items fraudulently claimed.* Claims are not payable for items fraudulently claimed. When investigation discloses that a claimant, claimant's agent, claimant's employee, or member of claimant's family has intentionally misrepresented an item claimed as to cost, condition, costs to repair, etc., the item will be disallowed in its entirety even though some actual damage has been sustained. However, if the remainder of the claim is proper, it may be paid. This does not preclude appropriate disciplinary action if warranted.

(18) *Minimum amount.* Loss or damage amounting to less than $10.

§ 11.75 Claims involving carriers and insurers.

In the event the property which is the subject of a claim was lost or damaged while in the possession of a carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(1) If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document.

(2) The demand should be made within the time limit provided in the policy and prior to the filing of a claim against the Government.

(3) If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) Whenever property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under terms and conditions of the insurance coverage, prior to the filing of the concurrent claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer, had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing of such a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit a claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of the claim is made by the carrier or insurer.

(1) Upon submission of a claim to the Government, the claimant must certify in the claim that no recovery (or the amount of recovery) has been gained from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If the carrier or insurer has not taken final action on the claim against them, by the time the claimant submits a claim to the Government, the claimant will immediately notify them to address all correspondence in regard to the claim to him/her, in care of the General Counsel of FEMA.

(3) The claimant shall timely advise the General Counsel in writing, of any action which is taken by the carrier or insurer on the claim. On request, the claimant also will furnish such evidence as may be required to enable the United States to enforce the claim.

(e) When a claim is paid by FEMA, the claimant will assign to the United States, to the extent of any payment on the claim accepted by claimant, all rights, title, and interest in any claim against the carrier, insurer, or other party arising out of the incident on which the claim against the Government is based. After payment of the claim by the Government, the claimant will, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by the claimant from the United States.

(f) When a claimant recovers for the loss from the carrier or insurer before the claim against the Government under this subpart is settled, the amount or recovery shall be applied to the claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this subpart, no compensation is allowable under this subpart.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss;

(3) For the purpose of this paragraph (f) the claimant's total loss is to be determined without regard to the $25,000 maximum set forth above. However, if the resulting amount, after making this deduction, exceeds $25,000, the claimant will be allowed only $25,000.

§ 11.76 Claims procedures.

(a) *Filing a claim.* Applicants shall file claims in writing with the General Counsel, Federal Emergency Management Agency, Washington, DC 20472. Each written claim shall contain, as a minimum:

(1) Name, address, and place of employment of the claimant;

(2) Place and date of the damage or loss:

(3) A brief statement of the facts and circumstances surrounding the damage or loss;

(4) Cost, date, and place of acquisition of each price of property damaged or lost;

(5) Two itemized repair estimates, or value estimates, whichever is applicable;

(6) Copies of police reports, if applicable;

(7) A statement from the claimant's supervisor that the loss was incident to service;

(8) A statement that the property was or was not insured;

(9) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept, a statement as to what security precautions were taken to protect the property involved;

(10) With respect to claims involving property being used for the benefit of the Government, a statement by the claimant's supervisor that the claimant was required to provide such property or that the claimant's providing it was in the interest of the Government; and

(11) Other evidence as may be required.

(b) *Single claim.* A single claim shall be presented for all lost or damaged property resulting from the same incident. If this procedure causes a hardship, the claimant may present an initial claim with notice that it is a partial claim, an explanation of the circumstances causing the hardship, and an estimate of the balance of the claim and the date it will be submitted. Payment may be made on a partial claim if the adjudicating authority determines that a genuine hardship exists.

(c) *Loss in quarters.* Claims for property loss in quarters or other authorized places should be accompanied by a statement indicating:

(1) Geographical location;

(2) Whether the quarters were assigned or provided in-kind by the Government;

(3) Whether the quarters are regularly occupied by the claimant;

(4) Names of the authority, if any, who designated the place of storage of the property if other than quarters;

(5) Measures taken to protect the property; and

(6) Whether the claimant is a local inhabitant.

(d) *Loss by theft or robbery.* Claims for property loss by theft or robbery should be accompanied by a statement indicating:

(1) Geographical location;

(2) Facts and circumstances surrounding the loss, including evidence of the crime such as breaking and entering, capture of the thief or robber, or recovery of part of the stolen goods; and

(3) Evidence that the claimant exercised due care in protecting the property prior to the loss, including information as to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(e) *Transportation losses.* Claims for transportation losses should be accompanied by the following:

(1) Copies of orders authorizing the travel, transportation, or shipment or a certificate explaining the absence of orders and stating their substance;

(2) Statement in cases where property was turned over to a shipping officer, supply officer, or contract packer indicating:

(i) Name (or designation) and address of the shipping officer, supply officer, or contract packer indicating;

(ii) Date the property was turned over;

(iii) Inventoried condition when the property was turned over;

(iv) When and where the property was packed and by whom;

(v) Date of shipment;

(vi) Copies of all bills of lading, inventories, and other applicable shipping documents;

(vii) Date and place of delivery to the claimant;

(viii) Date the property was unpacked by the carrier, claimant, or Government;

(ix) Statement of disinterested witnesses as to the condition of the property when received and delivered, or as to handling or storage;

(x) Whether the negligence of any Government employee acting within the scope of his/her employment caused the damage or loss;

(xi) Whether the last common carrier or local carrier was given a clear receipt, except for concealed damages;

(xii) Total gross, tare, and new weight of shipment;

(xiii) Insurance certificate or policy if losses are privately insured;

(xiv) Copy of the demand on carrier or insured, or both, when required, and the reply, if any;

(xv) Action taken by the claimant to locate missing baggage or household effects, including related correspondence.

(f) *Marine or aircraft disaster.* Claims for property losses due to marine or aircraft disaster should be accompanied by a copy of orders or other evidence to establish the claimant's right to be, or to have property on board.

(g) *Enemy action, public disaster, or public service.* Claims for property losses due to enemy action, public disaster, or public service should be accompanied by:

(1) Copies of orders or other evidence establishing the claimant's required presence in the area involved; and

(2) A detailed statement of facts and circumstances showing an applicable case enumerated in § 11.73(c)(8).

(h) *Money.* Claims for loss of money deposited for safekeeping, transmittal, or other authorized disposition should be accompanied by:

(1) Name, grade, and address of the person or persons who received money and any others involved;

(2) Name and designation of the authority who authorized such person or persons to accept personal funds and the disposition required; and

(3) Receipts and written sworn statements explaining the failure to account for funds or return them to the claimant.

(i) *Motor vehicles or mobile homes in transit.* Claims for damage to motor vehicles or mobile homes in transit should be accompanied by a copy of orders or other available evidence to establish the claimant's lawful right to have the property shipped and evidence to establish damage in transit.

§ 11.77 Settlement of claims.

(a) The General Counsel, FEMA, is authorized to settle (consider, ascertain, adjust, determine, and dispose of, whether by full or partial allowance or disallowance) any claim under this subpart.

(b) The General Counsel may formulate such procedures and make such redelegations as may be required to fulfill the objectives of this subpart.

(c) The General Counsel shall conduct or request the Office of Inspector General to conduct such investigation as may be appropriate in order to determine the validity of a claim.

(d) The General Counsel shall notify a claimant in writing of action taken on their claim, and if partial or full disallowance is made, the reasons therefor.

(e) In the event a claim submitted against a carrier under § 11.75 has not been settled, before settlement of the claim against the Government pursuant to this subpart, the General Counsel shall notify such carrier or insurer to pay the proceeds of the claim to FEMA to the extent FEMA has paid such to claimant in settlement.

(f) The settlement of a claim under this subpart, whether by full or partial allowance or disallowance, is final and conclusive.

§ 11.78 Computation of amount of award.

(a) The amount allowed for damage to or loss of any items of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange), and there will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage, of

property lost or damaged beyond economical repair, less any salvage value; or

(2) The reasonable cost or repairs, when property is economically repairable, provided that the cost of repairs does not exceed the amount allowable under paragraph (a)(1) of this section.

(b) Depreciation in value is determined by considering the type of article involved, its costs, its conditions when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Replacement of lost or damaged property may be made in-kind whenever appropriate.

§ 11.79 Attorney's fees.

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. A person violating this section shall be fined not more than $1,000.

(Information collection approved by Office of Management and Budget under Control No. 3067-0167)

PART 12—ADVISORY COMMITTEES

Sec.

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AUTHORITY: Federal Advisory Committee Act, 5 U.S.C. App. 1; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148; E.O. 12024.

SOURCE: 45 FR 64180, Sept. 29, 1980, unless otherwise noted.

§ 12.1 Purpose and applicability.

(a) The regulations in this part implement the Federal Advisory Committee Act, Executive Order 12024 and General Services Administration Regulation 41 CFR Part 101-6. The provisions of the Federal Advisory Committee Act in this part shall apply to all advisory committees established by the Federal Emergency Management Agency (FEMA), including advisory committees created pursuant to any act of Congress relating to the United States Fire Administration, Federal Insurance Administration, or any other component of the Federal Emergency Management Agency, except to the extent that any act of Congress establishing an advisory committee reporting to the agencies specifically provides otherwise.

(b) This part does not apply to interagency advisory committees or advisory committees established by the President unless specifically made applicable by the establishing authority.

(c) This part does not apply to any local group, contractor, grantee, or other organization whose primary function is to render public service with respect to a Federal program, or any state or local committee, counsel, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

[45 FR 64180, Sept. 29, 1980, as amended at 48 FR 44543, Sept. 29, 1983; 50 FR 40007, Oct. 1, 1985]

§ 12.2 Definitions.

As used in this part—

"Act" means the Federal Advisory Committee Act (86 Stat. 770).

"Advisory Committee" is used as per the meaning set forth in section 3(2) of the Act.

"Agency" means the Federal Emergency Management Agency, established by Presidential Reorganization Plan No. 3 of 1978, or any component thereof.

"Administrator, GSA" means the Administrator of General Services.

"Director" means the Director of the Federal Emergency Management Agency.

"FEMA" means the Federal Emergency Management Agency.

"GSA" means the General Services Administration.

"Presidential Advisory Committee" means an advisory committee which advises the President of the United States.

"Secretariat" means the Committee Management Secretariat of the General Services Administration.

"Any officer of the Federal Government" means any agency official or employee of the Federal government designated to perform duties with respect to an advisory committee established under this part.

"Nonstatutory advisory committee" means an advisory committee not established by statute or reorganization plan.

§ 12.3 Policy.

In determining whether an advisory committee should be created, and in reviewing the functions of operating advisory committees, the Agency will:

(a) Establish new advisory committees only when they are determined to be essential, keeping their number to the minimum necessary to accomplish the assigned mission of the agency or its components;

(b) Provide standards and uniform procedures to govern the establishment, operation, administration, and duration of the advisory committees;

(c) Terminate the advisory committees when they are no longer necessary to carry out the purposes for which they were established; and

(d) Keep the Congress and the public informed with respect to the number, purpose, membership, activity, and cost of the advisory committees.

§ 12.4 Interpretations.

Except as specifically authorized in writing by the Director, including internal instructions, no interpretation of the meaning of the regulations in this part by any employee or officer of the Agency, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Agency.

§ 12.5 Advisory committee management officer.

(a) The Director will designate as advisory committee management officer the Chief, Staff Planning and Evaluation, Office of Administrative Support, who shall:

(1) Exercise control and supervision over the establishment, procedures, and accomplishments of the advisory committees established by the Director; and

(2) Assemble and maintain the reports, records, and other papers of any advisory committee during its existence.

(b) The name of the Advisory Committee Management Officer designated in accordance with this part shall be provided to the Secretariat.

[45 FR 64180, Sept. 29, 1980, as amended at 47 FR 13149, Mar. 29, 1982; 48 FR 44543, Sept. 29, 1983; 49 FR 33879, Aug. 27, 1984]

§ 12.6 Establishment of advisory committees.

(a) No advisory committee shall be established under this part unless such establishment is:

(1) Specifically authorized by statute or the President of the United States; or

(2) Determined as a matter of formal record by the Director after consultation with the Secretariat, with timely notice published in the FEDERAL REGISTER as a matter of the public interest, in connection with the performance of duties imposed on the agency by law.

(b) The determination required by paragraph (a)(2) of this section shall:

(1) Contain a clearly defined purpose for the advisory committee;

(2) Require the membership of the advisory committee to be fairly balanced in terms of the points of view represented in the functions performed by the advisory committee;

(3) Contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the

result of the advisory committee's independent judgment;

(4) Contain provisions dealing with the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the agency determines the provisions of § 12.16 of this part to be inadequate; and

(5) Contain provisions which will assure that the advisory committee will have adequate staff (either supplied by the Agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) Consultation with the Secretariat may be in the form of a letter from the Agency describing the nature and purpose of the proposed advisory committee, including an explanation of why the functions of the proposed committee could not be performed by FEMA or by an existing committee. The letter should describe the Agency's plan to attain balanced membership on the proposed committee, as prescribed in paragraph (b)(2) of this section. If the Secretariat is satisfied that the establishment of the advisory committee will be in accord with the Act, the Agency shall certify in writing that creation of the advisory committee is in the public interest.

(d) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions.

§ 12.7 Charter.

(a) No advisory committee established under this part shall meet or take any action until an advisory committee charter has been filed with the Agency and the standing Committee or Committees of the Senate and House of Representatives having legislative jurisdiction over the FEMA component to which the advisory committee renders its advice.

(b) The charter required by paragraph (a) of this section shall contain at least the following information:

(1) The committee's official designations;

(2) The committee's objectives and the scope of its activities;

(3) The period of time necessary for the committee to carry out its purposes;

(4) The FEMA component and official to whom the committee reports;

(5) The FEMA component responsible for providing the necessary support for the committee;

(6) A description of the duties for which the committee is responsible, and, if such duties are not solely advisory, specification of the authority for such functions;

(7) The estimated annual operating cost in dollars and man years for the committee;

(8) The estimated number in frequency of committee meetings;

(9) The committee's termination date, if less than 2 years from the date of committee's establishment; and

(10) The date the charter is filed.

(c) A copy of the charter required by paragraph (a) of this section shall also be furnished at the time of filing to the Library of Congress, Exchange and Gift Division, Federal Advisory Committee—Washington, DC 20540.

(d) An amendment to the charter may be filed whenever there is a substantial change regarding matters stated in the original charter.

(e) The requirements of this section shall also apply to committees utilized as advisory committees, even though not expressly established for that purpose.

§ 12.8 Meetings.

(a) Advisory committees established under this part shall not hold any meetings, nor shall they render any advice, except at the call of, or with the advice and approval of, the Federal Officer or employee designated in accordance with § 12.10 of this part, who shall also approve the agenda of such meetings. Timely notice of each meeting shall be provided in accordance with § 12.11 of this part.

(b) The agenda required by paragraph (a) of this section shall list the matters to be considered at the meeting. It shall also indicate when any part of the meeting will concern matters within the exceptions of the (Government) Sunshine Act, 5 U.S.C. 552b, and § 12.9 of this part.

(c) Subject to the provisions of § 12.9 of this part, each advisory committee meeting shall be open to the public. Meetings which are completely or partly open to the public shall be held at reasonable times and at such a place that is reasonably accessible to the public. The size of the meeting room should be determined by such factors as the size of the committee, the number of members of the public who could reasonably be expected to attend, the number of persons who attended similar meetings in the past, and the resource facilities available.

(d) Any member of the public shall be permitted to file a written statement with the committee related to any meeting that is completely or partly open to the public. Interested persons may also be permitted by the committee chairman to speak at such meetings in accordance with the procedures established by the committee.

§ 12.9 Closed meetings.

(a) The requirements of § 12.8 (c) and (d) of this part that meetings shall be open to the public and that the public shall be afforded an opportunity to participate in such meetings shall not apply to any advisory committee meeting which the President or the Director determines is concerned with matters listed in 5 U.S.C. 552b(c).

(b) An advisory committee which seeks to have all or part of its meetings closed shall notify the Director before the scheduled date of the meeting. The notification shall be in writing and shall specify the reasons why any part of the meeting should be closed.

(c) A request that the meeting be closed will be granted upon determination by the Director that the request is in accordance with the policies of this part. The Director's determination will be in writing and will state the specific reasons for closing all or part of the meeting. The determination will be made available to the public upon request.

(d) The Director may delegate responsibility for making the determination required by paragraph (c) of this section. In any case where the determination to close the meeting is made by the Director's delegate, the determination will be reviewed by the General Counsel.

(e) When a meeting is closed to the public, the advisory committee shall issue a report, at least annually, setting forth a summary of its activities in such meetings, addressing those related matters as would be informative to the public and consistent with the policy of 5 U.S.C. 552b(c) and of this part. Notice of the availability of such annual reports shall be published in accordance with § 12.11 of this part.

§ 12.10 Designated Federal officer or employee.

(a) The Agency will designate an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee established under this part.

(b) No advisory committee shall conduct any meeting in the absence of the Federal employee or officer designated in accordance with paragraph (a) of this section.

(c) The Federal officer or employee designated in accordance with paragraph (a) of this section is authorized, whenever he/she determines it to be in the public interest, to adjourn any committee meeting he/she is designated to chair or attend.

§ 12.11 Public notice.

(a) The Agency's determination procedure described by § 12.6 of this part for the creation of the advisory committee, and a description of the nature and purpose of the committee, should be published in the FEDERAL REGISTER at least 15 days prior to the filing of the committee's charter, unless the Secretariat, for good cause, authorizes a shorter period of time between publication of the notice and the filing of the charter.

(b) Except when the Administrator GSA determines contrarily for reasons of national security, timely notice of each advisory committee meeting whether open or closed to the public, shall be published in the FEDERAL REGISTER at least 15 days before the meeting date. Such notice should state the name of the advisory committee, the time, place and purpose of the meeting, and should include, where appropriate, a summary of the meeting agenda. Notice ordinarily should state that the meeting is open to the public or explain why the meeting or any portion of the meeting is to be closed. Notices shorter than the time prescribed by this paragraph may be provided in emergency situations, and the reasons for such emergency exceptions should be made part of the meeting notice. *Due to the emergency nature of FEMA's many programs, it is contemplated that advisory committees may have to be established or meetings called on fairly short notice; however, every effort should be made to comply with the notice requirement, except in cases where delay may result in harm to individuals or damage to property.* A request for a determination that notice of a meeting should not be published for reasons of national security shall be submitted to the Administrator GSA with a statement of reasons supporting such request at least 30 days before the meeting is scheduled. Where, however, there is a significant likelihood of severe damage to property or injury to individuals, the notice period may be reduced as necessary to minimize such damage or injury.

(c) In addition to the notice required by paragraph (b) of this section, other forms of notice such as public releases and notices by mail should be used to inform the public of advisory committee meetings.

(d) The Committee Management Officer, in coordination with the Office of Public Affairs, should, where practical, maintain lists of people and organizations interested in advisory committees and notify them of meetings by mail.

(e) Notice of the availability of the annual reports required by § 12.9(e) of this part will be published in the FEDERAL REGISTER no later than 60 days after their completion. Notice will include instructions which will allow the public access to the reports.

§ 12.12 Minutes.

(a) Detailed minutes of each advisory committee meeting shall be kept and shall contain a record of the persons present, a complete summary of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The record of persons present shall include the time and place of the meeting, a list of advisory committee members and staff and agency employees present at the meeting, a list of members of the public who presented oral or written statements, and an estimated number of members of the public who attended the meeting. The minutes shall describe the extent to which the meeting was open to the public and the extent of public participation. If it is impracticable to attach to the minutes of the meeting any report received, issued, or approved by the advisory committee, then the minutes will describe the report in sufficient detail to enable any person requesting the report to readily identify it.

(b) The accuracy of all minutes shall be certified by the chairperson of the advisory committee concerned, except in the case of a subcommittee or subgroup of the advisory committee, in which case the accuracy of the minutes shall be certified by the chairperson of the subcommittee or subgroup concerned *and co-signed by the chairperson of the advisory committee.*

§ 12.13 Transcripts of the advisory committee meetings and agency proceedings.

Copies of transcripts of advisory committee meetings which have been prepared will be made available to any person at the actual cost of duplication, as prescribed in § 12.17 of this part.

§ 12.14 Annual comprehensive review.

(a) The Agency will conduct an annual comprehensive review of the activities and responsibilities of each advisory committee to determine:

(1) Whether such committee is carrying out its purpose;

(2) Whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) Whether it should be merged with any other advisory committee or committees; or

(4) Whether it should be abolished.

(b) Pertinent factors to be considered in the comprehensive review required by paragraph (a) of this section includes the following:

(1) The number of times the committee has met in the past year;

(2) The number of reports or recommendations submitted by the committee;

(3) An evaluation of the substance of the reports or recommendations submitted by the committee, regarding the Agency's programs or operations;

(4) An evaluation of the utilization by the Agency of the committee's policy formation recommendations in: program planning, decision making, more effective achievement of program objectives, and more economical accomplishment of programs in general, with emphasis in such evaluation on the preceding 12 month period of the committee's work;

(5) Whether information or recommendations could be obtained from sources within the Agency or from other advisory committees already in existence;

(6) The degree of duplication of effort by the committee as compared with that of other parts of the Agency or other advisory committees; and

(7) The estimated annual cost of the committee.

(c) The annual review required by this section shall be conducted on a calendar year basis, and results of the review shall be included in the annual report to the Secretariat required by § 12.16(b) of this part. The report shall contain a justification of each advisory committee which the Agency determines should be continued, making reference, as appropriate, to the factors specified in paragraph (b) of this section.

(d) The review will examine all advisory committees, and committees found to be no longer needed shall be terminated. Advisory committees established by act of Congress or the President of the United States will be reviewed, and if appropriate, their termination will be recommended.

§ 12.15 Termination and renewal of advisory committees.

(a) Each advisory committee shall terminate not later than the expiration of the 2 year period beginning on the date of its establishment, unless:

(1) In the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(2) In the case of an advisory committee established by an Act of Congress, its duration is otherwise provided by law.

(b) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive 2-year periods by appropriate action taken by the President or such officer prior to the date on which the advisory committee would otherwise terminate.

(c) Before it renews a non-statutory advisory committee in accordance with paragraph (a) or (b) of this section, the Agency will inform the Secretariat by letter, not more than 60 days nor less than 30 days before the committee expires, of the following:

(1) Its determination that a renewal is necessary and is in the public interest;

(2) The reasons for its determination;

(3) The Agency's plan to attain balanced membership on the committee;

(4) An explanation of why the committee's functions cannot be performed by the Agency or by an existing advisory committee.

(d) After concurrence by the Secretariat, the Agency will certify in writing that the renewal of the advisory committee is in the public interest, and will publish a notice of the renewal in the FEDERAL REGISTER, and will file a new charter in accordance with § 12.7 of this part.

(e) Any advisory committee established by an Act of Congress shall file a charter in accordance with § 12.7 of this part upon the expiration of each successive 2-year period following the date of enactment of the Act establishing such advisory committee.

(f) No advisory committee required under this section to file a charter shall take any action, other than preparation and filing of such charter, between the date the new charter is required and the date on which such charter is actually filed.

§ 12.16 Reports about the advisory committees.

(a) The Agency will furnish a report of the activities of the FEMA advisory committees annually to the Administrator, General Services Administration, in accordance with the Federal Property Management Regulations.

(b) The Agency will furnish a report of the activities of FEMA advisory committees annually to the Secretariat.

(c) The Agency will inform the Secretariat, by letter, of the termination of, or other significant changes with respect to, its advisory committees no later than 10 working days following the end of the month in which the committee is changed. If no changes are made during any given month the report of the Secretariat is not required.

[45 FR 64180, Sept. 29, 1980, as amended at 48 FR 44543, Sept. 29, 1983]

§ 12.17 Availability of documents and information on advisory committees.

(a) Subject to the provisions of §§ 12.12 and 12.13 of this part, the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for by each advisory committee shall be available for public inspection and copying at a single location in the FEMA Headquarters, Washington, DC, in accordance with the regulations in Part 5 of this chapter.

(b) The Agency will maintain systematic information on the nature, functions, and operations of each of its advisory committees. A complete set of the charters of the Agency's advisory committees and copies of the annual reports required by § 12.16 will be maintained for public inspection in the FEMA Headquarters.

[45 FR 64180, Sept. 29, 1980, as amended at 47 FR 13150, Mar. 29, 1982]

§ 12.18 Uniform pay guidelines.

(a) *Members.* Subject to the provisions of this section, the pay of any member of an advisory committee shall be fixed at the daily equivalent rate of the FEMA general salary schedule unless the member is appointed as a consultant, to be compensated as provided in paragraph (c) of this section. In determining an appropriate rate of pay for the members of an advisory committee, consideration shall be given to the significance, scope and technical complexity of the matters with which the advisory committee is concerned, and the qualifications required of the members of the advisory committee. The pay of the members of an advisory committee shall not be fixed at a rate higher than the daily equivalent of the maximum rate for GS-15 unless the Director has determined that, under the factors set forth in this paragraph, a higher rate of pay is justified and necessary. Such a determination will be reviewed annually by the Director.

(b) *Advisory committee staff.* The pay of each member of the staff of an advisory committee shall be fixed at a rate of the general salary schedule in which the staff member's position would be appropriately compensated for in the FEMA evaluation system applicable to the position. Pay of the member of the staff of an advisory committee shall not be fixed at a rate higher than the daily equivalent of the maximum rate for a GS-15 unless the Director or his designee has determined that, under its evaluation system, the staff member's position would appropriately be placed in the General Salary Schedule at a grade higher than GS-15. Such a determination will be reviewed by the Director annually.

(c) *Consultants.* The rate of pay of a consultant to an advisory committee shall not exceed the maximum rate of pay which FEMA may pay experts and consultants under 5 U.S.C. 3109. Consideration shall be given to the qualifications required of the consultant and the significance, scope, and technical complexity of the work in fixing the rate of pay for the consultants.

(d) *Voluntary services.* The provisions of this section shall not prevent FEMA from accepting the voluntary services of a member of an advisory committee, or a member of the staff of an advisory committee, provided that

FEMA has the authority to accept such services without compensation.

(e) *Reimbursable travel expenses.* The members of an advisory committee and the staff thereof, while engaged in the performance of their duties away from their home or regular places of business, may be allowed travel expenses, including per diem and in lieu of subsistences, as authorized by 5 U.S.C. 5703 for persons employed intermittently in the government service.

§ 12.19 Fiscal and administrative responsibilities.

(a) The Comptroller, FEMA, shall keep such records as will fully disclose the disposition of any funds which may be at the disposal of any FEMA advisory committee.

(b) The FEMA Advisory Committee management officer or designee shall keep such records as are necessary to fully disclose the nature and extent of the activities of the FEMA advisory committees.

(c) Support services shall be provided by FEMA for each advisory committee established by or reporting to it, unless the establishing authority provides otherwise. Where such advisory committee reports to more than one agency, only one agency or component thereof shall be responsible for support services at any one time, and the establishing authority shall designate the agency responsible for providing such services.

[45 FR 64180, Sept. 29, 1980, as amended at 48 FR 44543, Sept. 29, 1983]

PART 13—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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AUTHORITY: Reorg. Plan No. 3 1978, EO 12127; EO 12148.

SOURCE: 53 FR 8078, 8087, Mar. 11, 1988, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 49 FR 24958, June 18, 1984, 52 FR 20178, May 29, 1987, and 53 FR 8028, Mar. 11, 1988.

Subpart A—General

§ 13.1 Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 13.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 13.3 Definitions.

As used in this part:

"Accrued expenditures" mean the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Acquisition cost" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Administrative" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Awarding agency" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

"Cash contributions" means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"Cost sharing or matching" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditure report" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"Government" means a State or local government or a federally recognized Indian tribal government.

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"Grantee" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"Local government" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"Obligations" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"OMB" means the United States Office of Management and Budget.

"Outlays" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"Prior approval" means documentation evidencing consent prior to incurring specific cost.

"Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Share", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"Supplies" means all tangible personal property other than "equipment" as defined in this part.

"Suspension" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"Terms of a grant or subgrant" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"Third party in-kind contributions" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"Unliquidated obligations" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"Unobligated balance" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 13.4 Applicability.

(a) *General.* Subparts A-D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of §13.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I-III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV-E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241-1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 13.4(a) (3)-(8) are subject to Subpart E.

§ 13.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 13.6.

§ 13.6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the FEDERAL REGISTER.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 13.10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 13.11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 13.12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grante or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements

FINANCIAL ADMINISTRATION

§ 13.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 13.21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 13.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 13.22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OBM Circular A-122.
Educational institutions	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OBM Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 13.23 Period fo availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 13.24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions*—(1) *Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 13.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 13.25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services*—(1) *Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the

services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2) (i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 13.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 13.25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 13.34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 13.31 and 13.32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 13.26 Non-Federal audit.

(a) *Basic Rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for

Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private for profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local govenments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 13.36 shall be followed.

CHANGES, PROPERTY, AND SUBAWARDS

§ 13.30 Changes

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 13.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes*—(1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require

approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 13.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget formal the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 13.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 13.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title.* Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 13.32 Equipment.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 13.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow 13.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 13.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 13.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 13.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 13.36 Procurement.

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest,

real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative anaylsis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A pro-

testor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §13.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than $25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 13.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.* (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price resonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 13.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solication has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review [delete “,”] procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this seciton; or

(ii) The procurement is expected to exceed $25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed $25,000, specifies a “brand name” product; or

(iv) The proposed award over $25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than $25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subconstracts exceeding $100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The “bid guarantee” shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this Section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of $2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ 13.37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 13.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 13.10;

(2) Section 13.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § 13.21; and

(4) Section 13.50.

REPORTS, RECORDS, RETENTION, AND ENFORCEMENT

§ 13.40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annu reports shall be due 30 days after th reporting period. The final perfor ance report will be due 90 days aft the expiration or termination of gra support. If a justified request is su mitted by a grantee, the Feder agency may extend the due date f any performance report. Additionall requirements for unnecessary pe formance reports may be waived b the Federal agency.

(2) Performance reports will contai for each grant, brief information o the following:

(i) A comparison of actual accom plishments to the objectives estab lished for the period. Where th output of the project can be quanti fied, a computation of the cost pe unit of output may be required if tha information will be useful.

(ii) The reasons for slippage if estab lished objectives were not met.

(iii) Additional pertinent informa tion including, when appropriate, anal ysis and explanation of cost overrun or high unit costs.

(3) Grantees will not be required t submit more than the original and tw copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or con-

templated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 13.41 Financial Reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extend required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report.*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 13.41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accural basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of subgrantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement*—(1) *Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 13.41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 13.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 13.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 13.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 13.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 13.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 13.41(b)(2).

§ 13.42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this Part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 13.36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period*—(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records*—(1) *Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records Unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 13.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § 13.35).

§ 13.44 Termination for convenience.

Except as provided in § 13.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 13.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 13.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)*

(3) *Final request for payment (SF-270) (if applicable).*

(4) *Invention disclosure (if applicable).*

(5) *Federally-owned property report:* In accordance with § 13.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 13.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 13.42;

(d) Property management requirements in §§13.31 and § 13.32; and

(e) Audit requirements in § 13.26.

§ 13.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an adminstrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

PART 14—ADMINISTRATION OF GRANTS: AUDITS OF STATE AND LOCAL GOVERNMENTS

Sec.
14.1 Scope of part.
14.2 Non-Federal audits.
APPENDIX A—OMB CIRCULAR A-128, "AUDITS OF STATE AND LOCAL GOVERNMENTS"

AUTHORITY: Reorganization Plan No. 3 of 1978; E.O. 12127, E.O. 12148, 31 U.S.C. 7505.

SOURCE: 51 FR 24347, July 3, 1986, unless otherwise noted.

§ 14.1 Scope of part.

(a) This part contains standards for non-Federal audits of recipients of financial assistance from the Federal Emergency Management Agency (herein called recipients). This includes, without limitation, assistance under the Disaster Relief Act of 1974 as amended, and the Federal Civil Defense Act of 1950, as amended.

(b) FEMA may not impose on recipients additional requirements concerning non-Federal audits. However, it may provide recipients with suggestions and assistance on this subject.

§ 14.2 Non-Federal audits.

(a) *Governmental recipients.* Recipients that are governments shall comply with OMB Circular A-128 including any amendments published in the FEDERAL REGISTER by OMB. The Circular is codified verbatim as Appendix A to this part.

(b) *Grant or contract audits.* Recipients of $25,000 or more, but less than $100,000 in Federal financial assistance that choose not to have an organization wide single audit must conduct individual grant or contract audits on all FEMA awards over $25,000.

(c) *Submission of audit reports.* All copies of audit reports that a recipient is required under OMB Circular A-128 to submit to FEMA shall be addressed to the FEMA District Inspector General responsible for the FEMA Region in which the recipient is located. The FEMA Office of Inspector General will distribute copies as appropriate within the Agency. Recipients therefore are not required to send their audit reports to any FEMA officials other than the responsible District Inspector General.

APPENDIX A—OMB CIRCULAR A-128, "AUDITS OF STATE AND LOCAL GOVERNMENTS"

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A-128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98-502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the

cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

- The amounts reported as expenditures were for allowable services, and
- The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

- Matching requirements, levels of effort and earmarking limitations were met,
- Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and
- Amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments,* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) of this appendix for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Fed-*

eral Domestic Assistance. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

—Negative assurance on those items not tested;

—A summary of all instances of noncompliance; and

—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f of this appendix.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognin agency.

g. Recipients of more than $100,000 Federal funds shall submit one copy of t audit report within 30 days after issuance a central clearinghouse to be designated the Office of Management and Budget. T clearinghouse will keep completed audits file and follow up with State and local g ernments that have not submitted requir audit reports.

h. Recipients shall keep audit reports file for three years from their issuance.

14. *Audit Resolution.* As provided in pa graph 11, the cognizant agency shall be sponsible for monitoring the resolution audit findings that affect the programs more than one Federal agency. Resoluti of findings that relate to .he programs o single Federal agency will be the respon bility of the recipient and that agency. ternate arrangements may be made on case-by-case basis by agreement among t agencies concerned.

Resolution shall be made within months after receipt of the report by t Federal departments and agencies. Corr tive action should proceed as rapidly as p sible.

15. *Audit workpapers and reports.* Wo papers and reports shall be retained fo minimum of three years from the date the audit report, unless the auditor is n fied in writing by the cognizant agency extend the retention period. Audit wo papers shall be made available upon requ to the cognizant agency or its designee the General Accounting Office, at the co pletion of the audit.

16. *Audit Costs.* The cost of audits made accordance with the provisions of this C cular are allowable charges to Federal sistance programs.

a. The charges may be considered a dir cost or an allocated indirect cost, det mined in accordance with the provision Circular A-87, "Cost principles for St and local governments."

b. Generally, the percentage of co charged to Federal assistance programs a single audit shall not exceed the perce age that Federal funds expended repres of total funds expended by the recipie during the fiscal year. The percentage m be exceeded, however, if appropriate doc mentation demonstrates higher actual co

17. *Sanctions.* The Single Audit Act p vides that no cost may be charged to Fed al assistance programs for audits requir by the Act that are not made in accordan with this Circular. In cases of continued ability or unwillingness to have a prop audit, Federal agencies must consider oth appropriate sanctions including:

- Withholding a percentage of assistance payments until the audit is completed satisfactorily,
- Withholding or disallowing overhead costs, and
- Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) of section 19 of this appendix when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

DAVID A. STOCKMAN,
Director.

ATTACHMENT—CIRCULAR A-128

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

PART 15—CONDUCT AT THE FEMA SPECIAL FACILITY

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15.4 Preservation of property.
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15.11 Photographs and other depictions.
15.12 Dogs and other animals.
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15.14 Weapons and explosives.
15.15 Penalties and other laws.

AUTHORITY: FEMA Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148; delegation of authority from the Administrator of General Services, dated July 18, 1979; Pub. L. 566, 80th Congress, approved June 1, 1948 (40 U.S.C. 318-318d); and the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended.

SOURCE: 49 FR 20498, May 15, 1984, unless otherwise noted.

§ 15.1 Applicability.

These rules and regulations apply to all the property known as the "Special Facility," located on Mt. Weather on Virginia Route 601 near Berryville, Virginia, which is owned, operated or under the charge and control of the Federal Emergency Management Agency (FEMA) and to all persons entering, while on, or leaving the property.

§ 15.2 Admission.

The Special Facility contains classified material and areas which must be protected in the interest of national security. The facility is designated a restricted area. Access to the Special Facility is closed to the general public and is limited to those persons having official business related to the missions and operations of the Special Facility. Persons and vehicles entering the Special Facility must be approved for admission by the Director, Federal Emergency Management Agency, or his/her designee, registered with the Special Facility security force, and issued a Special Facility identification badge and vehicle parking decal or permit. No person shall enter or remain on the Special Facility premises unless he or she has received permission from the Director, FEMA or his/her designee and has complied with the above procedures.

§ 15.3 Inspection.

All vehicles, packages, handbags, briefcases, and other containers being brought into, while on, or being removed from the Special Facility are subject to inspection by security force personnel and other authorized personnel. A full search may accompany an arrest. Inspection is permitted to prevent the possession and use of items prohibited by these rules and regulations or by other applicable laws, to prevent theft of property and to prevent the wrongful obtaining of defense information under 18 U.S.C. 793. Individuals objecting to such inspections must make their objection known to the officer on duty at the entrance gate prior to entering the Special Facility. Individuals refusing to permit an inspection of their vehicle or possessions will not be authorized or allowed to enter the premises of the Special Facility.

§ 15.4 Preservation of property.

The improper disposal of rubbish at the Special Facility, the willful destruction of or damage to property, the theft of property, the creation of any hazard on the property to persons or things, the throwing of articles of any kind from or at a building, or the climbing upon a fence, or the climbing upon the roof or any part of a building is prohibited.

§ 15.5 Conformity with signs and directions.

Persons at the Special Facility shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the directions of law enforcement and other authorized officials.

§ 15.6 Disturbances.

Any unwarranted loitering, disorderly conduct, or other conduct at the Special Facility which creates loud or unusual noise or a nuisance; which unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, roadways or parking lots; which otherwise impedes or disrupts the performance of official duties by government employees; or which prevents persons from obtaining the administrative services provided at the Special Facility in a timely manner, is prohibited.

§ 15.7 Gambling.

Participating in games for money or other personal property, or the operating of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets at the Special Facility is prohibited.

§ 15.8 Alcoholic beverages and narcotics.

Operating a motor vehicle at the Special Facility by a person under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines is prohibited. Entering upon, or while on the property, under the influence of or using or possessing any narcotic drug, marijuana, hallucinogen, barbiturate or amphetamine is prohibited. This prohibition shall not apply in cases where the drug has been prescribed for a patient by a physician. Entering upon the property, or being on the property under the influence of alcoholic beverages is prohibited. Bringing alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines onto the premises of the Special Facility is prohibited unless authorization has been granted by the Director, FEMA or his designee.

§ 15.9 Soliciting, vending, and debt collection.

Soliciting alms and contributions, commercial or political soliciting and vending of all kinds, displaying or distributing commercial advertising, or collecting private debts at the Special Facility is prohibited. This rule does not apply to (a) national or local drives for funds for welfare, health, or other purposes as authorized by the "Manual on Fund Raising Within the Federal Service" issued by the U.S. Office of Personnel Management and sponsored or approved by the occupant agencies (all such drives must have the prior approval of the Director, Federal Emergency Management Agency or his/her designee); (b) concessions or personal notices posted by employees on authorized bulletin boards; and (c) solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub. L. 95-454).

§ 15.10 Distribution of handbills.

The distribution of materials such as pamphlets, handbills and/or flyers, and the displaying of placards or posting of materials on bulletin boards or elsewhere at the Special Facility is prohibited except as authorized in § 15.9 of this part or when such distribution or displays are conducted as part of authorized government activities.

§ 15.11 Photographs and other depictions.

The taking of photographs and the making of notes, sketches, or diagrams of buildings, grounds or other appurtenances of the Special Facility, or the possession of a camera is prohibited while at the Special Facility except when approved by the Director, Federal Emergency Management Agency, or his/her designee.

§ 15.12 Dogs and other animals.

Dogs and other animals, except seeing-eye dogs, shall not be brought onto the Special Facility for other than official purposes.

§ 15.13 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles entering or while at the Special Facility shall drive in a careful and safe manner at all times and shall comply with the signals and directions of security force officers or other authorized individuals and all posted traffic signs;

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on the property is prohibited;

(c) Except in emergencies, parking on the property is not allowed without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owners' risk and expense. This paragraph may be supplemented from time to time with the approval of the Director of Federal Emergency Management Agency, or his/her designee, by the issuance and posting of such specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part thereof. Proof that a motor vehicle was parked in violation of these regulations or directives may be taken as prima facie evidence that the registered owner was responsible for the violation.

§ 15.14 Weapons and explosives.

No person entering or while at the Special Facility shall carry or possess firearms, other dangerous or deadly weapons, explosives or items intended to be used or which could reasonably be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes and upon the approval of the Director, Federal Emergency Management Agency, or his/her designee.

§ 15.15 Penalties and other laws.

Whoever shall be found guilty of violating any rule or regulation herein is subject to a fine of not more than $50 or imprisonment for not more than 30 days, or both. (See 40 U.S.C. 318c.) Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or any State and local laws and regulations applicable to the Special Facility premises. These rules and regulations supplement those penal provisions of Title 18, United States Code, relating to Crimes and Criminal Procedure, which apply without regard to the place of the offense and those penal provisions which apply in areas under the special maritime and territorial jurisdiction of the United States, as defined in 18 U.S.C. 7. However, they supersede those provisions of State law which are made Federal criminal offenses by virtue of the Assimilated Crimes Act (18 U.S.C. 13) to the extent that they are in conflict with these regulations. State and local criminal laws are applicable as such only to the extent that authority in that regard has been reserved to the State by the State consent or cession statute or vested in the State by Federal statute.

PART 16—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY

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AUTHORITY: 29 U.S.C. 794.

SOURCE: 53 FR 25885, JULY 8, 1988, UNLESS OTHERWISE NOTED.

§ 16.101 Purpose.

The purpose of this regulation is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 16.102 Application.

This regulation (§§ 16.101-16.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 16.103 Definitions.

For purposes of this regulation, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Historic preservation programs" means programs conducted by the agency that have preservation of historic properties as a primary purpose.

"Historic properties" means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this regulation by § 16.140.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this regulation, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

"Substantial impairment" means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 16.104—16.109 [Reserved]

§ 16.110 Self-evaluation.

(a) The agency shall, by September 6, 1989, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this regulation and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 16.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 16.112—16.129 [Reserved]

§ 16.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this regulation.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this regulation.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 16.131—16.139 [Reserved]

§ 16.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subject to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§ 16.141—16.148 [Reserved]

§ 16.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 16.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 16.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 16.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of § 16.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of § 16.150(a) (2) or (3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by November 7, 1988, except that where structural changes in facilities are undertaken, such changes shall be made by September 6, 1991, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 6, 1989, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 16.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§§ 16.152—16.159 [Reserved]

§ 16.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 16.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 16.161—16.169 [Reserved]

§ 16.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director of Personnel shall be responsible for coordinating implementation of this section. Complaints may be sent to Director of Personnel, Room 810, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 16.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§§ 16.171—16.999 [Reserved]

PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

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APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS
APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

AUTHORITY: Executive Order 12549, Reorg. Plan No. 3 1978.

SOURCE: 53 FR 19199, and 19204, May 26, 1988, unless otherwise noted.

EDITORIAL NOTE: For additional information, see related documents published at 50 FR 8053, Mar. 5, 1985, 52 FR 18768, May 19, 1987, and 52 FR 45667, Dec. 1, 1987.

Subpart A—General

§ 17.100 Purpose.

(a) Executive Order 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of Executive Order 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the Executive Order by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that each agency shall use;

(3) Providing for the listing of debarred and suspended participants, participants declared ineligible (see definition of "ineligible" in § 17.105(i)), and participants who have voluntarily excluded themselves from participation in covered transactions;

(4) Setting forth the consequences of a debarment, suspension, determination of ineligibility, or voluntary exclusion; and

(5) Offering such other guidance as necessary for the effective implementation and administration of the governmentwide system.

(c) Although these regulations cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

§ 17.105 Definitions.

(a) *Adequate evidence.* Information sufficient to support the reasonable belief that a particular act or omission has occurred.

(b) *Affiliate.* Persons are affiliates of each another if, directly or indirectly, either one controls or has the power to control the other, *or*, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person.

(c) *Agency.* Any executive department, military department or defense agency or other agency of the executive branch, excluding the independent regulatory agencies.

(d) *Civil judgment.* The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation, or otherwise creating a civil liability for the wrongful acts complained of; or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801-12).

(e) *Conviction.* A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

(f) *Debarment.* An action taken by a debarring official in accordance with these regulations to exclude a person from participating in covered transactions. A person so excluded is "debarred."

(g) *Debarring official.* An official authorized to impose debarment. The debarring official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(h) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

(i) *Ineligible.* Excluded from participation in Federal nonprocurement programs pursuant to a determination of ineligibility under statutory, executive order, or regulatory authority, other than Executive Order 12549 and its agency implementing regulations; for exemple, excluded pursuant to the Davis-Bacon Act and its implementing regulations, the equal employment opportunity acts and executive orders, or the environmental protection acts and executive orders. A person is ineligible where the determination of ineligibility affects such person's eligibility to participate in more than one covered transaction.

(j) *Legal proceedings.* Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State of local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

(k) *Nonprocurement List.* The portion of the *List of Parties Excluded from Federal Procurement or Nonprocurement Programs* complied, maintained and distributed by the General Services Administration (GSA) containing the names and other information about persons who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(l) *Notice.* A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer of the party. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

(m) *Pariicipant.* Any person who submits a proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who acts on behalf of or is authorized to commit a participant in a covered transaction as an agent or representative of another participant.

(n) *Person.* Any individual, corporation, partnership, association, unit of government or legal entity, however organized, except: foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities.

(o) *Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(p) *Principal.* Officer, director, owner, partner, key employee, or other person within a participant with primary management or supervisory responsibilities; or a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant. Persons who have a critical influence on or substantive control over a covered transaction are:

(1) Principal investigators.

(2) [Reserved]

(q) *Proposal.* A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking to participate or to receive a benefit, directly or indirectly, in or under a covered transaction.

(r) *Respondent.* A person against whom a debarment or suspension action has been initiated.

(s) *State.* Any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency of a State, exclusive of institutions of higher education, hospitals, and units of local government. A State instrumentality will be considered part of the State government if it has a written determination from a State government that such State considers that instrumentality to be an agency of the State government.

(t) *Suspending official.* An official authorized to impose suspension. The suspending official is either:

(1) The agency head, or

(2) An official designated by the agency head.

(u) *Suspension.* An action taken by a suspending official in accordance with these regulations that immediately excludes a person from participating in covered transactions for a temporary period, pending completion of an investigation and such legal, debarment, or Program Fraud Civil Remedies Act proceedings as may ensue. A person so excluded is "suspended."

(v) *Voluntary exclusion or voluntarily excluded.* A status of nonparticipation or limited participation in covered transactions assumed by a person pursuant to the terms of a settlement.

(w) *FEMA.* Federal Emergency Management Agency.

[53 FR 19199, 19200, and 19204, May 26, 1988]

§ 17.110 Coverage.

(a) These regulations apply to all persons who have participated, are currently participating or may reasonably be expected to participate in transactions under Federal nonprocurement programs. For purposes of these regulations such transactions will be referred to as "covered transactions."

(1) *Covered transaction.* For purposes of these regulations, a covered transaction is a primary covered transaction or a lower tier covered transaction. Covered transactions at any tier need not involve the transfer of Federal funds.

(i) *Primary covered transaction.* Except as noted in paragraph (a)(2) of this section, a primary covered transaction is any nonprocurement transaction between an agency and a person, regardless of type, including: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, donation agreements and any other nonprocurement transactions between a Federal agency and a person. Primary covered transactions also include those transactions specially designated by the U.S. Department of Housing and Urban Development in such agency's regulations governing debarment and suspension.

(ii) *Lower tier covered transaction.* A lower tier covered transaction is:

(A) Any transaction between a participant and a person other than a procurement contract for goods or services, regardless of type, under a primary covered transaction.

(B) Any procurement contract for goods or services between a participant and a person, regardless of type, expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 2304(g) and 41 U.S.C. 253(g) (currently $25,000) under a primary covered transaction.

(C) Any procurement contract for goods or services between a participant and a person under a covered transaction, regardless of amount, under which that person will have a critical influence on or substantive control over that covered transaction. Such persons are:

(*1*) Principal investigators.

(*2*) Providers of federally-required audit services.

(2) *Exceptions.* The following transactions are not covered:

(i) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(ii) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, entities consisting wholly or partially of foreign governments or foreign governmental entities;

(iii) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(iv) Federal employment;

(v) Transactions pursuant to national or agency-recognized emergencies or disasters;

(vi) Incidental benefits derived from ordinary governmental operations; and

(vii) Other transactions where the application of these regulations would be prohibited by law.

(b) *Relationship to other sections.* This section describes the types of transactions to which a debarment or suspension under the regulations will apply. Subpart B, "Effect of Action," § 17.200, "Debarment or suspension," sets forth the consequences of a debarment or suspension. Those consequences would obtain only with respect to participants and principals in the covered transactions and activities described in § 17.110(a). Sections 17.325, "Scope of debarment," and 17.420, "Scope of suspension," govern the extent to which a specific participant or organizational elements of a participant would be automatically included within a debarment or suspension action, and the conditions under which affiliates or persons associated with a participant may also be brought within the scope of the action.

(c) *Relationship to Federal procurement activities.* Debarment and suspension of Federal procurement contractors and subcontractors under Federal procurement contracts are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4.

§ 17.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these regulations, are appropriate means to implement this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these regulations.

(c) When more than one agency has an interest in the proposed debarment or suspension of a person, consideration shall be given to designating one agency as the lead agency for making the decision. Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

Subpart B—Effect of Action

§ 17.200 Debarment or suspension.

(a) *Primary covered transactions.* Except to the extent prohibited by law, persons who are debarred or suspended shall be excluded from primary covered transactions as either participants or principals throughout the executive branch of the Federal Government for the period of their debarment or suspension. Accordingly, no agency shall enter into primary covered transactions with such debarred or suspended persons during such period, except as permitted pursuant to § 17.215.

(b) *Lower tier covered transactions.* Except to the extent prohibited by law, persons who have been debarred or suspended shall be excluded from participating as either participants or principals in all lower tier covered transactions (see § 17.110(a)(1)(ii)) for the period of their debarment or suspension.

(c) *Exceptions.* Debarment or suspension does not affect a person's eligibility for:

(1) Statutory entitlements or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), including deposited funds insured by the Federal Government;

(2) Direct awards to foreign governments or public international organizations, or transactions with foreign governments or foreign governmental entities, public international organizations, foreign government owned (in whole or in part) or controlled entities, and entities consisting wholly or partially of foreign governments or foreign governmental entities;

(3) Benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted);

(4) Federal employment;

(5) Transactions pursuant to national or agency-recognized emergencies or disasters;

(6) Incidental benefits derived from ordinary governmental operations; and

(7) Other transactions where the application of these regulations would be prohibited by law.

§ 17.205 Ineligible persons.

Persons who are ineligible, as defined in § 17.105(i), are excluded in accordance with the applicable statutory, executive order, or regulatory authority.

§ 17.210 Voluntary exclusion.

Persons who accept voluntary exclusions under § 17.315 are excluded in accordance with the terms of their settlements. FEMA shall, and participants may, contact the original action agency to ascertain the extent of the exclusion.

§ 17.215 Exception provision.

FEMA may grant an exception permitting a debarred, suspended, or voluntarily excluded person to participate in a particular covered transaction upon a written determination by the agency head or an authorized designee stating the reason(s) for deviating from the Presidential policy established by Executive Order 12549 and § 17.200 of this rule. However, in accordance with the President's stated intention in the Executive Order, exceptions shall be granted only infrequently. Exceptions shall be reported in accordance with § 17.505(a).

§ 17.220 Continuation of covered transactions.

(a) Notwithstanding the debarment, suspension, determination of ineligibility, or voluntary exclusion of any person by an agency, agencies and participants may continue covered transactions in existence at the time the person was debarred, suspended, declared ineligible, or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in § 17.215.

§ 17.225 Failure to adhere to restrictions.

Except as permitted under § 17.215 or § 17.220 of these regulations, a participant shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate. A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction (see Appendix B), unless it knows that the certification is erroneous. An agency has the burden of proof that such participant did knowingly do business with such a person.

Subpart C—Debarment

§ 17.300 General.

The debarring official may debar a person for any of the causes in § 17.305, using procedures established in §§ 17.310 through 17.314. The existence of a cause for debarment, however, does not necessarily require that the person be debarred; the seriousness of the person's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

§ 17.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ 17.300 through 17.314 for:

(a) Conviction of or civil judgment for:

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a person.

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as:

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction.

(c) Any of the following causes:

(1) A nonprocurement debarment by any Federal agency taken before October 1, 1988, the effective date of these regulations, or a procurement debarment by any Federal agency taken pursuant to 48 CFR Subpart 9.4;

(2) Knowingly doing business with a debarred, suspended, ineligible, or voluntarily excluded person, in connection with a covered transaction, except as permitted in § 17.215 or § 17.220;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 17.315 or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a person.

§ 17.310 Procedures.

FEMA shall process debarment actions as informally as practicable, consistent with the principles of fundamental fairness, using the procedures in §§ 17.311 through 17.314.

§ 17.311 Investigation and referral.

Information concerning the existence of a cause for debarment from any source shall be promptly reported, investigated, and referred, when appropriate, to the debarring official for consideration. After consideration, the debarring official may issue a notice of proposed debarment.

§ 17.312 Notice of proposed debarment.

A debarment proceeding shall be initiated by notice to the respondent advising:

(a) That debarment is being considered;

(b) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(c) Of the cause(s) relied upon under § 17.305 for proposing debarment;

(d) Of the provisions of §§ 17.311 through 17.314, and any other FEMA procedures, if applicable, governing debarment decisionmaking; and

(e) Of the potential effect of a debarment.

§ 17.313 Opportunity to contest proposed debarment.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(b) *Additional proceedings as to disputed material facts.* (1) In actions not based upon a conviction or civil judgment, if the debarring official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents.

(2) A transcribed record of any additional proceedings shall be made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 17.314 Debarring official's decision.

(a) *No additional proceedings necessary.* In actions based upon a conviction or civil judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The debarring official may refer disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(3) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(c) (1) *Standard of proof.* In any debarment action, the cause for debarment must be established by a preponderance of the evidence. Where the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(2) *Burden of proof.* The burden of proof is on the agency proposing debarment.

(d) *Notice of debarring official's decision.* (1) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(i) Referring to the notice of proposed debarment;

(ii) Specifying the reasons for debarment;

(iii) Stating the period of debarment, including effective dates; and

(iv) Advising that the debarment is effective for covered transactions throughout the executive branch of the Federal Government unless an agency head or an authorized designee makes the determination referred to in § 17.215.

(2) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§ 17.135 Settlement and voluntary exclusion.

(a) When in the best interest of the Government, FEMA may, at any time, settle a debarment or suspension action.

(b) If a participant and the agency agree to a voluntary exclusion of the participant, such voluntary exclusion shall be entered on the Nonprocurement List (see Subpart E).

§ 17.320 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the causes(s). Generally, a debarment should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed. If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §§ 17.311 through 17.314 shall be followed to extend the debarment.

(c) The respondent may request the debarring official to reverse the debarment decision or to reduce the period or scope of debarment. Such a request shall be in writing and supported by documentation. The debarring official may grant such a request for reasons including, but not limited to:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§ 17.325 Scope of debarment.

(a) *Scope in general.* (1) Debarment of a person under these regulations constitutes debarment of all its divisions and other organizational elements from all covered transactions, unless the debarment decision is limited by its terms to one or more specifically identified individuals, divisions or other organizational elements or to specific types of transactions.

(2) The debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond (see §§ 17.311 through 17.314).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct

shall be evidence of such knowledge, approval, or acquiescence.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture, grant pursuant to a joint application, or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

Subpart D—Suspension

§ 17.400 General.

(a) The suspending official may suspend a person for any of the causes in § 17.405 using procedures established in §§ 17.410 through 17.413.

(b) Suspension is a serious action to be imposed only when:

(1) There exists adequate evidence of one or more of the causes set out in § 17.405, and

(2) Immediate action is necessary to protect the public interest.

(c) In assessing the adequacy of the evidence, the agency should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as grants, cooperative agreements, loan authorizations, and contracts.

§ 17.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§ 17.400 through 17.413 upon adequate evidence:

(1) To suspect the commission of an offense listed in § 17.305(a); or

(2) That a cause for debarment under § 17.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§ 17.410 Procedures.

(a) *Investigation and referral.* Information concerning the existence of a cause for suspension from any source shall be promptly reported, investigated, and referred, when appropriate, to the suspending official for consideration. After consideration, the suspending official may issue a notice of suspension.

(b) *Decisionmaking process.* FEMA shall process suspension actions as informally as practicable, consistent with principles of fundamental fairness, using the procedures in § 17.411 through § 17.413.

§ 17.411 Notice of suspension.

When a respondent is suspended, notice shall immediately be given:

(a) That suspension has been imposed;

(b) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(c) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(d) Of the cause(s) relied upon under § 17.405 for imposing suspension;

(e) That the suspension is for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings;

(f) Of the provisions of § 17.411 through § 17.413 and any other FEMA procedures, if applicable, governing suspension decisionmaking; and

(g) Of the effect of the suspension.

§ 17.412 Opportunity to contest suspension.

(a) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(b) *Additional proceedings as to disputed material facts.* (1) If the suspending official finds that the respondent's submission in opposition raises a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with a representative, submit documentary evidence, present witnesses, and confront any witness the agency presents, unless:

(i) The action is based on an indictment, conviction or civil judgment, or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(2) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, upon request, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

§ 17.413 Suspending official's decision.

The suspending official may modify or terminate the suspension (for example, see § 17.320(c) for reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(a) *No additional proceedings necessary.* In actions: based on an indictment, conviction, or civil judgment; in which there is no genuine dispute over material facts; or in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(b) *Additional proceedings necessary.* (1) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(2) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary or capricious or clearly erroneous.

(c) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent.

§ 17.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of an investigation or ensuing legal, debarment, or Program Fraud Civil Remedies Act proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General or United States Attorney requests its extension in writing, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ 17.420 Scope of suspension.

The scope of a suspension is the same as the scope of a debarment (see § 17.325), except that the procedures of §§ 17.410 through 17.413 shall be used in imposing a suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

§ 17.500 GSA responsibilities.

(a) In accordance with the OMB guidelines, GSA shall compile, maintain, and distribute a list of all persons who have been debarred, suspended, or voluntarily excluded by agencies under Executive Order 12549 and these regulations, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, ineligible, and voluntarily excluded persons, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ 17.505 FEMA responsibilities.

(a) The agency shall provide GSA with current information concerning debarments, suspension, determinations of ineligibility, and voluntary exclusions it has taken. Until February 18, 1989, the agency shall also provide GSA and OMB with information concerning all transactions in which FEMA has granted exceptions under § 17.215 permitting participation by debarred, suspended, or voluntarily excluded persons.

(b) Unless an alternative schedule is agreed to by GSA, the agency shall advise GSA of the information set forth in § 17.500(b) and of the exceptions granted under § 17.215 within five working days after taking such actions.

(c) The agency shall direct inquiries concerning listed persons to the agency that took the action.

(d) Agency officials shall check the Nonprocurement List before entering covered transactions to determine whether a participant in a primary transaction is debarred, suspended, ineligible, or voluntarily excluded (Tel. #).

(e) Agency officials shall check the Nonprocurement List before approving principals or lower tier participants where agency approval of the principal or lower tier participant is required under the terms of the transaction, to determine whether such principals or participants are debarred, suspended, ineligible, or voluntarily excluded.

§ 17.510 Participants' responsibilities.

(a) *Certification by participants in primary covered transactions.* Each participant shall submit the certification in Appendix A to this Part for it and its principals at the time the participant submits its proposal in connection with a primary covered transaction, except that States need only complete such certification as to their principals. Participants may decide the method and frequency by which they determine the eligibility of their principals. In addition, each participant may, but is not required to, check the Nonprocurement List for its principals (Tel. #). Adverse information on the certification will not necessarily result in denial of participation. However, the certification, and any additional information pertaining to the certification submitted by the participant, shall be considered in the administration of covered transactions.

(b) *Certification by participants in lower tier covered transactions.* (1) Each participant shall require participants in lower tier covered transactions to include the certification in Appendix B to this Part for it and its principals in any proposal submitted in connection with such lower tier covered transactions.

(2) A participant may rely upon the certification of a prospective participant in a lower tier covered transaction that it and its principals are not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction by any Federal agency, unless it knows that the certification is erroneous. Participants may decide the method and frequency by which they determine the eligiblity of their principals. In addition, a participant may, but is not required to, check the Nonprocurement List for its principals and for participants (Tel. #).

(c) *Changed circumstances regarding certification.* A participant shall provide immediate written notice to FEMA if at any time the participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Participants in lower tier covered transactions shall provide the same updated notice to the participant to which it submitted its proposals.

APPENDIX A—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS—PRIMARY COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall privide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a

participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State of local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

APPENDIX B—CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILTY AND VOLUNTARY EXCLUSION—LOWER TIER COVERED TRANSACTIONS

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List (Tel. #).

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent

person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

PARTS 18–24 [RESERVED]

PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Titled IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

§ 25.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

[52 FR 48026, Dec. 17, 1987]

EFFECTIVE DATE NOTE: *At 52 FR 48026, D 17, 1987, Part 25 was revised, effective A 2, 1989. For the convenience of the user, P 25 currently in effect, appears as follows.*

PART 25—UNIFORM RELOCATIO ASSISTANCE AND REAL PROPE TY ACQUISITION FOR FEDERA AND FEDERALLY ASSISTED PR GRAMS

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AUTHORITY: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

SOURCE: 51 FR 7020—7022, Feb. 27, 1986, unless otherwise noted.

EDITORIAL NOTE: In Part 25, §§ 25.102(e), 25.103(b), 25.104(c), 25.203(a), 25.203(c), 25.205(b), 25.207(g) and 25.303(b) contain paperwork requirements subject to review by OMB under Pub. L. 96-511, the Paperwork Reduction Act (the Act) and will not become effective until OMB approval has been obtained. The Federal Emergency Management Agency will publish a notice in the FEDERAL REGISTER once OMB approval has been obtained.

Subpart A—General

§ 25.1 Purpose and applicability.

(a) *Purpose.* The purpose of these regulations is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.), in accordance with the following objectives:

(1) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; and

(2) To ensure that persons displaced as a result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole.

(b) *Applicability.* (1) Regulations applicable to those program activities which are abled to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. Title 49 Part will apply to Superfund Relocation Assistance Programs beginning on or after January 19, 1988.

(2) Until April 2, 1989, the provisions of this part are applicable only to those program activities which are unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-256, 42 U.S.C. 4601 note).

[51 FR 7020—7022, Feb. 27, 1986, as amended at 52 FR 48026, Dec. 17, 1987]

§ 25.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State or State agency which acquires the real property or displaces a person (see § 25.2(f)).

(b) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Solely for the purpose of § 25.303 of these regulations, conducted primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe, and sanitary as described in § 25.2(e).

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space. (See Appendix A.)

(3) In an area that is not subject to unreasonable adverse environmental conditions, is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 25.403(a)(2).)

(5) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A.)

(6) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described at § 25.401(c), all increased mortgage interest costs as described at § 25.401(d) (for last resort housing see Appendix A, § 25.602) and all incidental expenses as described at § 25.401(e).

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if the monthly rent at the replacement dwelling does not exeed the monthly rent at the displacement dwelling, after taking into account any rental assistance which the person receives under these regulations. If the cost of any utility service is included in either rent, an appropriate adjustment must be made if necessary to ensure that like circumstances are compared. For a person who paid little or no rent before displacement, the market rent of the displacement, the market rent of the displacement dwelling may be used when computing costs (see Appendix A, § 25.402(b) (1)).

(iii) Whenever a $15,000 replacement housing payment under § 25.401 or a $4,000 replacement housing payment under § 25.402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency shall provide additional or alternative assistance under the last resort housing provisions at Subpart G, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means.

(d) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5,000; or

(2) Had average annual net earnings of at least $1,000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(e) *Decent, safe, and sanitary dwelling.* The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply, unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would

preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(f) *Displaced person*—(1) *General.* The term "displaced person" means any person (defined at § 25.2(m)) who moves from the real property or moves his or her personal property from the real property:

(i) As a direct result of the Agency's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the initiation of negotiations as described at § 25.2(k); or

(ii) As a result of a written order from the acquiring Agency to vacate such real property for the project; or

(iii) As a result of the Agency's acquisition of, or written order to vacate, for a project, other real property on which the person conducts a business or farm operation. Eligibility as a displaced person under this subparagraph applies only for purposes of obtaining relocation assistance advisory services under § 25.205 and moving expenses under § 25.301, 25.302, or 25.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as a displaced person under these regulations.

(i) A person who moves before the initiation of negotiations (see also § 25.403(e)); or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see also Appendix A); or

(iv) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(v) A person who, after receiving a notice of relocation eligibility (described at § 25.203), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(vi) An owner-occupant who voluntarily sells his or her property (as described at § 25.101(a) in Appendix A) after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to these regulations; or

(vii) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(viii) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303.

(g) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(h) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(i) *Federal agency.* The term "Federal agency" means any department, agency, or instrumentality in the Executive Branch of the Government, any wholly owned Government corporation, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

(j) *Federal financial assistance.* The term "Federal financial assistance" means any Federal grant, loan, or contribution, except a Federal guarantee or insurance.

(k) *Initiation of negotiations.* The term "initiation of negotiations" means the delivery of the initial written offer by the Agency to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation, unless applicable Federal program regulations specify a different action to serve this purpose. However:

(1) If the Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the date the person moves from the property. (See also § 25.505(c).)

(2) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Owner of displacement dwelling.* A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:

(1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraph (l) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(m) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(n) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(o) *State.* The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, or a political subdivision of any of these jurisidictions.

(p) *State agency.* The term "State agency" means any department, agency or instrumentality of a State or of a political subdivision of a State, or two or more States, or of two or more political subdivisions of a State or States.

(q) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(r) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 et seq.; Pub. L. 91-646), and amendments thereto.

§ 25.3 No duplication of payments.

No person shall receive any payment under these regulations if that person receives a payment under Federal, State, or local law which is determined to have the same purpose and effect as such payment under these regulations. (See Appendix A, § 25.3.)

§ 25.4 Assurances, monitoring and corrective action.

(a) *Assurances.* Before a Federal agency may approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and these regulations. A State agency's assurances under section 305 of the Uniform Act must contain specific reference to the State law which the Agency believes provides an exception to section 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally assisted programs or projects.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with these regulations, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and these regulations. The Federal agency may also apply sanctions in accordance with applicable program regulations.

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out these regulations in a manner that minimizes fraud, waste, and mismanagement.

§ 25.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under these regulations, except the notice described at § 25.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 25.6 Administration of jointly funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to these regulations, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and these regulations. All federally assisted activities under the agreement shall be deemed a project for the purposes of these regulations.

§ 25.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 25.8 Compliance with other laws and regulations.

The implementation of these regulations shall be in compliance with all applicable laws and implementing regulations, including the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 et seq.).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.).

(f) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(g) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.

(h) Executive Order 11246—Equal Employment Opportunity.

(i) Executive Order 11625—Minority Business Enterprise.

(j) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(k) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234);

(l) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(m) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

§ 25.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with these regulations. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under these regulations.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with these regulations are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under these regulations if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause.

§ 25.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and these regulations.

(b) *Actions which may be appealed.* A person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly determine the person's eligibility for, or the amount of, a payment required under § 25.106 or § 25.107, or a relocation payment required under these regulations. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose resonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 25.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any Agency acquisition of real property for a Federal or federally assisted project, except:

(1) Voluntary transactions that meet the criteria specified in Appendix A, § 25.101(a).

(2) The acquisition of real property from a Federal agency, State, or State agency, if the acquiring Agency does not have the authority to acquire the property through condemnation.

(b) *Less-than-full-fee interest in real property.* The requirements of this subpart apply to the acquisition of a life estate or a life use, to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements. (See also Appendix A, § 25.101 (b).)

(c) *Federally-assisted projects.* For federally-assisted projects the provisions of §§ 25.102, § 25.103, § 25.104, and § 25.105 apply to the extent practicable under State law. (See § 25.4 (a).)

§ 25.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and these regulations. (See also § 25.203.)

(c) *Appraisal and invitation to owner.* Before the initiation of negotiations, the real property shall be appraised and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 25.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and (1) discuss its offer to purchase the property including the basis for the offer of just compensation, and (2) explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 25.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or offer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trail costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall—

(1) Pay the agreed purchase price to the owner; or

(2) In the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property.

In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. An uneconomic remnant is a remaining part of the property in which the owner is left with an interest that the Agency determines has little or no utility or value to the owner.

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ 25.103 Criteria for appraisals.

(a) *Definition of appraisal.* An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(b) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, the appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, and adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevent physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(c) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(d) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 25.2(n)) of the retained improvement.

(e) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(f) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

§ 25.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they met applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of just compensation, and it is determined that it is not practical to obatin an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 25.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 25.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of Improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 25.2(n).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this subpart shall be construed to deprive the tenant-owner of any right to reject payment under this subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 25.106 Expenses incidental to transfer of title to the Agency.

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(a) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(b) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(c) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Agency shall pay these costs directly so that the owner not will have to pay such costs and then seek reimbursement from the Agency.

§ 25.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 25.108 Donations.

Nothing in these regulations shall prevent a person, after being informed of the right to receive just compensation, based on an appraisal of the real property, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Agency. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation.

Subpart C—General Relocation Requirements

§ 25.201 Purpose.

This subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance under the regulations in this part.

§ 25.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 25.2(f).

§ 25.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to eligibility for, or the amount of, any relocation payment for which the person may be eligible.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 25.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice*—(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 25.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the

Agency's determination shall be included in the applicable case file.

§ 25.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 25.2(c)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in monthly housing costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes for filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 25.205 Relocation assistance advisory servic

(a) *General.* The Agency shall carry out relocation assistance advisory program which satisfies the requirements of Title V of the Civil Rights Act of 1964 (42 U.S.C 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph (b) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project has caused substantial economic injury because of such acquisition, it may offer the services to such person.

(b) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(1) Determine the relocation needs and perferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 25.204(a).

(i) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 25.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(ii) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 25.2 (c) and (e).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocated to a comparable replacement dwelling.

(iv) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loans and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons to be displaced.

(c) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

§ 25.206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in these regulations. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later.

§ 25.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* All claims for a relocation payment shall be filed with the Agency within 18 months after:

(1) For tenants, the date of displacement;

(2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one diplsacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 25.204 of these regulations. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 25.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under these regulations shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

Subpart D—Payment for Moving and Related Expenses

§ 25.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 25.2(f)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 25.305, as the Agency determines to be reasonable and necessary.

§ 25.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling, or a seasonal residence, is entitled to receive a fixed payment in lieu of a payment for actual moving and related expenses under § 25.301, that consists of:

(a) A moving expense allowance not to exceed $300 which shall be determined in accordance with the applicable moving allowance schedule approved by the Federal Highway Administration; and

(b) A dislocation allowance of $200.

§ 25.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 25.2(f)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 25.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for—

(i) Planning the move of the personal property;

(ii) Moving the personal property; and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 25.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 25.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self-moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ 25.304 Fixed payment for moving expenses—Nonresidential moves.

(a) *Business.* A displaced business (except an outdoor advertising display business or a nonprofit organization) may be eligible to choose a fixed payment in lieu of a payment for actual moving and related expenses. The payment shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $2,500 nor more than $10,000. The displaced business is eligible for the payment if the Agency determined that:

(1) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency demonstrates that it will not suffer a substantial loss of its existing patronage; and

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Agency, and which is under the same ownership and engaged in the same or similar business activities. (For purposes of this rule a remaining business facility that did not contribute materially to the income of the displaced person during the 2 taxable years prior to displacement shall not be considered "another establishment."); and

(3) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 25.2(d)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 25.2(h) may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $2,500 nor more than $10,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses of $2,500, if the Agency determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Agency.

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 25.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this rule does not preclude the computation under § 25.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location; or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in § 25.303(a)(3); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

Subpart E—Replacement Housing Payments

§ 25.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of:

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or

(ii) The date the person moves from the displacement dwelling.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $15,000. (See also § 25.403(b).) The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as deter-

mined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential*—(1) *Determination of price differential.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 25.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for non-residential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 25.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacemet dwelling (defined at § 25.2(e)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A, § 25.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The amount to be paid under § 25.401(b)(2) is the sum of the present value of the following two items: The increase in interest costs that result when the mortgage interest rate on the replacement dwelling exceeds the mortgage interest rate on the displacement dwelling, and other debt service costs. The following rules apply to the computation:

(1) The payment shall be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling shall be used to compute the payment.

(2) The payment shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(3) The payment shall be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(4) The interest charge on the new mortgage shall not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(5) The present value of the increased interest costs shall be computed at the prevailing interest rate paid on savings deposits by commercial banks in the area in which the replacement dwelling is located.

(6) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent—

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area; and

(iii) The Agency determines them to be necessary.

The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 25.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 25.401(a) but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $4,000, computed and disbursed in accordance with § 25.402(b).

§ 25.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $4,000 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $4,000 for rental assistance. (See also § 25.403(b).) Such payment shall be 48 times the amount obtained by subtracting the average monthly rent of the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant or tenant who pays little or no rent, the average cost for rent shall be the fair market rent; see Appendix A, Subpart E), from the lesser of:

(i) The monthly rent for a comparable replacement dwelling; or

(ii) The monthly rent for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Utility services.* Any utility service which is included in the monthly rent for either the displacement dwelling or the comparable replacement dwelling must be included when computing the rental assistance payment. Appropriate adjustments to reflect the cost of utility services shall be made, if necessary to ensure that like circumstances are compared.

(3) *Manner of disbursement.* The payment under this section shall be disbursed in a lump sum, unless the Agency determines on a case-by-case basis, for good cause, that the payment should be made in installments.

(c) *Downpayment assistance payment*—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a payment for downpayment assistance not to exceed $4,000. Such payment shall be the full amount of the first $2,000 of the required downpayment and incidental expenses (see § 25.401(e)) plus one-half of any amount required over $2,000, provided that the displaced person matches equally the amount in excess of $2,000. A displaced person eligible to receive a replacement housing payment for a 180-day homeowner-occupant under § 25.401 is not eligible for this payment.

(2) *Required downpayment.* For purposes of this section, the term "required downpayment" means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the "required downpayment" shall be the amount which the Agency determines is necessary for the downpayment.

(3) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 25.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 25.2(c)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displace-

ment dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 25.205(b)(2)(i)). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(3) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Applicability of last resort housing.* Whenever a $15,000 replacement housing payment under § 25.401 or a $4,000 replacement housing payment under § 25.402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency shall provide additional or alternative assistance under the last resort housing provisions at Subpart G, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means as described in § 25.2(c)(6)).

(c) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 25.2(e).

(d) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(e) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(f) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 25.402(b) is eligible to receive a payment under § 25.401 or § 25.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 25.401 or § 25.402(c).

(g) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

Subpart F—Mobile Homes

§ 25.501 Applicability.

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile homesite who meets the basic eligibility requirements of these regulations. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 25.502 Moving and related expenses—Mobile homes.

A tenant or owner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her personal property on an actual cost basis in accordance with § 25.301 or, as an alternative, on the basis of a fixed payment under § 25.302. (However, if the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described at § 25.503(c), the owner is not eligible for payment for moving the mobile home.) The following rules apply to payments for actual moving expenses under § 25.301:

(a) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting and awnings) which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(b) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the Agency determines that it would be practical to relocate it, the reasonable cost of such repairs and/or modifications is reimbursable.

(c) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 25.503 Replacement housing payment for 180-day mobile homeowner-occupants.

A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $15,000, under § 25.401 if:

(a) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 25.401(a); and

(c) The Agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(1) Is not and cannot economically be made decent, safe, and sanitary; or

(2) Cannot be relocated without substantial damage or unreasonable cost; or

(3) Cannot be relocated because there is no available comparable replacement site; or

(4) Cannot be relocated because it does not meet mobile home park entrance requirements.

If the mobile home is not actually acquired, but the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 25.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ 25.504 Replacement housing payments for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $4,000, under § 25.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 25.402(a); and

(c) The Agency acquires the mobile home and/or mobile homesite, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 25.503(c).

§ 25.505 Additional rules governing relocation payment to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile homesite must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $15,000 or $4,000) permitted under the section that governs the computation for the dwelling. (See also § 25.403(b).)

(b) *Cost of comparable replacement dwelling.* (1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 25.401(c), the cost of a comparable replacement dwelling is the sum of—

(i) The value of the mobile home;

(ii) The cost of any necessary repairs or modifications; and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under these regulations, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under these regulations.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under these regulations, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under these regulations.

Subpart G—Last Resort Housing

§ 25.601 Applicability.

(a) *Basic determination to provide last resort housing.* A person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to the person. Whenever an Agency determines that a replacement housing payment under Subpart E would not be sufficient to provide a comparable replacement dwelling on a timely basis to the person, the Agency is authorized to take appropriate measures under this subpart to provide such a dwelling. The Agency's obligation to ensure that a comparable replacement dwelling is available shall be met when such a dwelling, or assistance necessary to provide such a dwelling, is offered under the provisions of this subpart.

(a) *Basic rights of persons to be displaced.* The provisions of this subpart do not deprive any displaced person of any rights the person may have under the Uniform Act or any implementing regulations. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under the procedures in this subpart (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible. A 180-day homeowner-occupant who is eligible for a payment under § 25.401 is entitled to a reasonable opportunity to purchase a comparable replacement dwelling. (See Appendix A, § 25.601(b).)

§ 25.602 Methods of providing replacement housing.

Agencies shall have broad latitude in implementing this subpart, but implementation shall be on a reasonable cost basis. The methods of providing last resort housing include, but are not limited to:

(a) Rehabilitation of and/or additions to an existing replacement dwelling.

(b) The construction of a new replacement dwelling.

(c) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(d) A replacement housing payment in excess of the limits set forth in § 25.401 or § 25.402. A rental assistance subsidy under this subpart may be provided in installments or in a lump sum.

(e) The relocation and, if necessary, rehabilitation of a dwelling.

(f) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with, a displaced person.

(g) The removal of barriers to the handicapped.

APPENDIX A—ADDITIONAL INFORMATION

This appendix provides additional information to explain the intent of certain provisions of the rule.

SUBPART A—GENERAL

Section 25.2(c) Definition of comparable replacement dwelling.

The requirement in § 25.2(c)(2) that a comparable replacement dwelling be "functionally similar" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

Generally, functional similarity is an objective standard, reflecting the range of purposes for which the various features of a dwelling may physically be used. However, in determining whether a replacement dwelling is functionally similar to the displacement dwelling, the Agency may consider reasonable trade-offs in specific features when the replacement unit is "equal or better than" the displacement dwelling.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa.

Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally similar" to a larger but very run-down substandard displacement dwelling.

Section 25.2(c)(5) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in these regulations prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under these regulations. (If a person accepts assistance under a government housing program, the rental assistance payment under § 25.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 25.2(f)(2) Persons not displaced.

Section 25.2(f)(2)(iii) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be displaced. Because such occupants are not considered "displaced persons" under these regulations, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under these regulations may file an appeal in accordance with § 25.10.

Section 25.2(k) Initiation of negotiations.

This section of the rule provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 25.3 No duplication of payments.

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 25.9(c) Reports.

This regulation allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on

Agencies implementing this rule, a basic report form (see Appendix B) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

SUBPART B—REAL PROPERTY ACQUISITION

Section 25.101(a) General.

The provisions of this subpart apply to real property acquisition for the following types of Federal or federally-assisted programs or projects:

(1) Those carried out under the threat of eminent domain, including amicable agreements under the threat of such power.

(2) Where there is an intended, planned, or designated project area, and all or substantially all of the property within that area is eventually intended to be acquired. Such acquisitions are subject to the requirements of this subpart whether or not the Agency has or intends to use the power of eminent domain.

Provided it does not conflict with the foregoing, an Agency may determine that the requirements of this subpart do not apply to an acquisition if all of the following conditions are present:

(1) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area.

(2) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is eventually to be acquired.

(3) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed.

Acquisitions meeting the foregoing criteria are classified as voluntary transactions. The essence of a voluntary transaction is the conditions surrounding the transaction, not the type of transaction itself. A voluntary transaction may involve a donation, an exchange, or a market sale, if the transaction is without compulsion on the part of the Agency.

In those situations where an Agency wishes to purchase more than one site within a geographic area on a "voluntary transaction" basis, it is intended that all owners be treated similarly.

Although the displacement of the owner-occupant of the real property as a result of a voluntary transaction is not subject to these regulations (see § 25.2(f)(2)(vi)), the displacement of a tenant-occupant of the real property is subject to these regulations.

Section 25.101(b) Less-than-full-fee interest in real property.

This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 25.102(d) Establishment of offer of just compensation.

The initial offer to the property owner may not be less than the amount of the Agency's approval appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 25.102(f) Basic negotiation procedures.

It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 25.102(i) Administrative settlement.

This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 25.102(j) Payment before taking possession.

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 25.102(m) Fair Rental.

Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value . . . to a short-term occupier." The Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 25.103(b) Standards of appraisal.

In paragraph (b)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 25.103(c) Influence of the project on just compensation.

As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 25.103(f) Conflict of interest.

The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, the rule provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § 25.104. This includes appraisals of real property valued at $2,500, or less.

Section 25.104 Review of appraisals.

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses on that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 25.106 Expenses incidental to transfer of title to the agency.

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Section 25.108 Donations.

This section provides that the Agency must obtain an appraisal and offer the full amount of just compensation due unless the owner, after being fully informed of such policies, releases the Agency from these obligations.

SUBPART C—GENERAL RELOCATION REQUIREMENTS

Section 25.204(a) Availability of comparable replacement dwelling before displacement.

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, this regulation requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this rule is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 25.205 Relocation assistance advisory services.

Section 25.205(b)(2)(iii) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 25.206 Eviction for cause.

Basic eligibility for assistance is established on the basis of facts existing as of the date of the initiation of negotiations. Once the Agency has determined that a person has satisfied such requirements, there is no basis for changing that determination.

Section 25.207 General requirements—claims for relocation payments.

Section 25.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate.

SUBPART E—REPLACEMENT HOUSING PAYMENTS

The provision in § 25.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have an appraisal made. Any reasonable method at arriving at the fair market value may be used.

The provision in § 25.402(b)(1) to use the fair market rent for the displacement dwelling is intended to address the computation of payments for homeowner-occupants (who, of course, paid no rent before displacement) and those unusual situations in which a tenant is paying an unreasonably low rent and a payment based on such rent would provide a windfall. The provision is not intended to apply in those situations where the use of the fair market rent would result in a hardship because of the displaced person's income or other special circumstances.

SUBPART F—MOBILE HOMES

Section 25.503(c) Replacement housing payment for 180-day mobile homeowner-occupants.

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 25.401 and a replacement housing payment for a site computed under § 25.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 25.401 to assist in the purchase of a replacement site or, under § 25.402, to assist in renting a replacement site.

SUBPART G—LAST RESORT HOUSING

Section 25.601(a) Basic determination to provide last resort housing.

No additional guidelines for implementation are included in the regulation because additional requirements would tend to limit the flexibility considered necessary or appropriate to provide comparable replacement housing on a timely basis.

Section 25.601(b) Basic rights of persons to be displaced.

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 25.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of displacement dwelling" at § 25.2(l). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 25.602 Methods of providing replacement housing.

The use of cost effective means of providing replacement housing is implied throughout the regulation. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are allowed, they should be cost-effective.

Whenever last resort housing assistance is provided to a 180-day homeowner-occupant who must pay a higher interest rate for a new mortgage, reimbursement of increased mortgage interest costs may be based on the "buy down" approach, rather than the more costly formula at § 25.401(d). Under the "buy down" approach, a lump sum payment is made to reduce the amount of the new mortgage to the amount which can be amortized with the same repayment schedule (payment amounts and due dates) as the mortgage on the displacement dwelling. However, the "buy down" approach shall not be used to reduce a payment to less than $15,000 if the payment computed under § 25.401 would equal $15,000.

APPENDIX B—STATISTICAL REPORT FORM

This appendix sets forth the statistical information which may be collected from Agencies in accordance with § 25.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646 (herein called the "Uniform Act").

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1–September 30, for the year in which the report is required.

3. *Where and when to submit report.* Submit an original and two copies of this

report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but *NOT LATER THAN NOVEMBER 15* of the year in which the report is due.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the payment was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in parentheses in Part B indicate the section of the Uniform Act that authorizes the cost.

Part A. Persons Displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the report year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation Payments and Expenses

Column (a) or (b). Report in Column (a) the number of claims approved during the report year. Report in Column (b) the total amount represented by the claims reported in Column (a).

Line 10b, Column (b). Report in Column (b) the amount of increased mortgage interest costs that was included in the total amount approved for Replacement Housing Payments for Homeowners on Line 10a, Column (b). Leave Line 10b, Column (a) blank.

Line 13. Report in Column (a) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column (b) the total financial assistance under section 206(a) allocable to the households reported in Column (a). (If a household received financial assistance under section 203 or section 204 as well as under section 206(a) of the Uniform Act, report the household as a claim in Column (a), but in Column (b) report only the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of $5,000 to rent a replacement dwelling, the sum of $4,000 shall be included on Line 11, Column (b), and $1,000 shall be included on Line 13, Column (b).)

Line 14. Report on Line 14 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

Part C. Real Property Acquisition Subject to Uniform Act

Line 16, Columns (a) and (b). Report in Column (a) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (b) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved. Leave Line 17, Column b), blank.

Part D. Relocation Appeals Filed During Report Year

Line 18. Report on Line 18 the total number of relocation appeals filed during the report year by a person alleging the Agency failed to properly determine the person's eligibility for, or the amount of, a relocation payment required under these regulations.

Model Uniform Act Report

Attachment
Appendix B

Part A. Persons Displaced by Activities Subject to the Uniform Act During Report Year

	Item	*Total* *(a)*	*No. of Owners* *(b)*	*No. of Tenants* *(c)*
1	Households *(Families and individuals)*			
2	Businesses and Nonprofit Organizations			
3	Farms			

Part B. Relocation Payments and Expenses Under Uniform Act During Report Year

	Item		*No. of Claims* *(a)*	*Amount* *(b)*
4	Payments for Moving Expenses for Households	Actual Expenses (Section 202(a))		
5		Fixed Payment Including Dislocation Allowance (Section 202(b))		
6	Payments for Moving Expenses for Business and Nonprofit Organizations	Actual Expenses (Section 202(a))		
7		Payment in Lieu of Actual Expenses (Section 202(c))		
8	Payment for Moving Expenses for Farms	Actual Expenses (Section 202(a))		
9		Payment in Lieu of Actual Expenses (Section 202(c))		
10a	Replacement Housing Payments for Homeowners *(Section 203(a))*			
10b	Amount on Line 10a Attributable to Increased Mortgage Interest Costs		▨	
11	Rental Assistance Payment *(Tenants and Certain Others) (Section 204(1))*			
12	Downpayment Assistance *(Tenants and Certain Others) (Section 204(2))*			
13	Housing Assistance as Last Resort *(Section 206(a))*			
14	Relocation Advisory Assistance and Services Cost *(Section 205)*		▨	
15	Total *(Sum of Lines 4 through 14 Excluding Line 10b)*		▨	

Part C. Real Property Acquisition Subject to Uniform Act During Report Year

	Item	*No. of Parcels* *(a)*	*Compensation* *(b)*
16	Total Parcels Acquired		
17	Total Parcels Acquired by Condemnation included on Line 16 *(where price disagreement was involved)*		▨

Part D. Relocation Grievances Filed During Report Year

		Total No.
18	Relocation Grievances Filed in Connection with Project/Program	

PARTS 26–49 [RESERVED]

SUBCHAPTER B—INSURANCE AND HAZARD MITIGATION

EDITORIAL NOTE: Nomenclature changes to Subchapter B appear at 44 FR 31177, May 31, 1979 and 44 FR 62517, October 31, 1979.

PARTS 50–54 [RESERVED]

NATIONAL INSURANCE DEVELOPMENT PROGRAM

PARTS 55–58 [RESERVED]

NATIONAL FLOOD INSURANCE PROGRAM

PART 59—GENERAL PROVISIONS

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AUTHORITY: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

Subpart A—General

§ 59.1 Definitions.

As used in this subchapter—

"Act" means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001-4128.

"Actuarial rates"—see "risk premium rates."

"Administrator" means the Federal Insurance Administrator.

"Agency" means the Federal Emergency Management Agency, Washington DC.

"Applicant" means a community which indicates a desire to participate in the Program.

"Appurtenant structure" means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

"Area of shallow flooding" means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

"Area of special flood hazard" is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, VO, or V1-30, VE, or V.

"Area of special mudslide (i.e., mudflow) hazard" is the land within a community most likely to be subject to severe mudslides (i.e., mudflows). The area may be designated as Zone M on the FHBM. After the detailed evaluation of the special mudslide (i.e., mudflow) hazard area in preparation for publication of the FIRM, Zone M may be further refined.

"Associate Director" means the Associate Director, State and Local Programs, and Support.

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

"Building"—see *"structure."*

"Chargeable rates" mean the rates established by the Administrator pursuant to section 1308 of the Act for first layer limits of flood insurance on existing structures.

"Chief Executive Officer" of the community ("CEO") means the official of the community who is charged with the authority to implement and administer laws, ordinances and regulations for that community.

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

"Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native village or authorized native organization, which has authority to adopt and enforce flood plain management regulations for the areas within its jurisdiction.

"Contents coverage" is the insurance on personal property within an enclosed structure, including the cost of debris removal, and the reasonable cost of removal of contents to minimize damage. Personal property may be household goods usual or incidental to residential occupancy, or merchandise, furniture, fixtures, machinery, equipment and supplies usual to other than residential occupancies.

"Criteria" means the comprehensive criteria for land management and use for flood-prone areas developed under 42 U.S.C. 4102 for the purposes set forth in Part 60 of this subchapter.

"Critical feature" means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

"Curvilinear Line" means the border on either a FHBM or FIRM that delineates the special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazard areas and consists of a curved or contour line that follows the topography.

"Deductible" means the fixed amount or percentage of any loss covered by insurance which is borne by the insured prior to the insurer's liability.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

"Director" means the Director of the Federal Emergency Management Agency.

"Eligible community" or *"participating community"* means a community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program.

"Elevated building" means a nonbasement building (i) built, in the case of a building in Zones A1-30, AE, A, A99, A0, AH, B, C, X, or D, to have the top of the elevated floor, or in the case of a building in Zones V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the flow of the water and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, A0, AH, B, C, X, or D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In the case of Zones V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building", even though the lower area is enclosed by means of breakaway

walls if the breakaway walls meet the standards of § 60.3(e)(5).

"Emergency Flood Insurance Program" or *"emergency program"* means the Program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

"Erosion" means the process of the gradual wearing away of land masses. This peril is not per se covered under the Program.

"Exception" means a waiver from the provisions of Part 60 of this subchapter directed to a community which relieves it from the requirements of a rule, regulation, order or other determination made or issued pursuant to the Act.

"Existing construction," means for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

"Existing manufactured home park or subdivision" means a manufactured home park for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) are completed before the effective date of floodplain management regulations adopted by a community.

"Existing structures" see *"existing construction."*

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

"Federal agency" means any department, agency, corporation, or other entity or instrumentality of the executive branch of the Federal Government, and includes the Federal National Mortgage Association and th Federal Home Loan Mortgage Corporation.

"Federal instrumentality responsib for the supervision, approval, regulation, or insuring of banks, savings an loan associations, or similar institutions" means the Board of Governor of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Federal Savings and Loan Insurance Corporation, and the National Credit Union Administration.

"Financial assistance" means any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance, other than general or special revenue sharing or formula grants made to States.

"Financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 other than assistance under such Act in connection with a flood. It includes only financial assistance insurable under the Standard Flood Insurance Policy.

"First-layer coverage" is the maximum amount of structural and contents insurance coverage available under the Emergency Program.

"Flood" or *"Flooding"* means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this def-

inition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

"Flood elevation determination" means a determination by the Administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

"Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

"Flood Hazard Boundary Map" (FHBM) means an official map of a community, issued by the Administrator, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

"Flood insurance" means the insurance coverage provided under the Program.

"Flood Insurance Rate Map" (FIRM) means an official map of a community, on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

"Flood Insurance Study" see *"flood elevation study."*

"Flood plain" or *"flood-prone area"* means any land area susceptible to being inundated by water from any source (see definition of "flooding").

"Flood plain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and flood plain management regulations.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a flood plain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

"Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

"Flood proofing" means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

"Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

"Flood-related erosion area" or *"flood-related erosion prone area"*

means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

"Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works, and flood plain management regulations.

"Floodway"—see *"regulatory floodway."*

"Floodway encroachment lines" mean the lines marking the limits of floodways on Federal, State and local flood plain maps.

"Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of flood plain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

"Functionally dependent use" means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

"General Counsel" means the General Counsel of the Federal Emergency Management Agency.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Independent scientific body" means a non-federal technical or scientific organization involved in the study of land use planning, flood plain management, hydrology, geology, geography, or any other related field of study concerned with flooding.

"Insurance adjustment organization" means any organization or person engaged in the business of adjusting loss claims arising under the Standard Flood Insurance Policy.

"Insurance company" or *"insurer"* means any person or organization authorized to engage in the insurance business under the laws of any State.

"Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

"Levee System" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; *Provided*, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of § 60.3.

"Mangrove stand" means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground and which contain one or more of the following species: Black mangrove (Avicennia Nitida); red mangrove (Rhizophora Mangle); white mangrove (Languncularia Racemosa); and buttonwood (Conocarpus Erecta).

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured

home" does not include park trailers, travel trailers, and other similar vehicles.

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or nore manufactured home lots for rent r sale.

"Map" means the Flood Hazard Boundary Map (FHBM) or the Flood nsurance Rate Map (FIRM) for a ommunity issued by the Agency.

"Mean sea level" means, for purposes of the National Flood Insurance rogram, the National Geodetic Verti- l Datum (NGVD) of 1929 or other atum, to which base flood elevations hown on a community's Flood Insur- ce Rate Map are referenced.

"Mudslide" (*i.e., mudflow*) describes condition where there is a river, flow inundation of liquid mud down a llside usually as a result of a dual ndition of loss of brush cover, and e subsequent accumulation of water the ground preceded by a period of usually heavy or sustained rain. A udslide (i.e., mudflow) may occur as distinct phenomenon while a land- le is in progress, and will be recog- ed as such by the Administrator y if the mudflow, and not the land- le, is the proximate cause of nage that occurs.

Mudslide (*i.e., mudflow*) *area man- ment"* means the operation of an rall program of corrective and pre- tive measures for reducing muds- (i.e., mudflow) damage, including not limited to emergency pre- edness plans, mudslide control ks, and flood plain management ulations.

Mudslide (*i.e., mudflow*) *prone* " means an area with land sur- s and slopes of unconsolidated ma- l where the history, geology and ate indicate a potential for mud-

ew construction" means, for the ose of determining insurance s, structures for which the "start onstruction" commenced on or the effective date of an initial M or after December 31, 1974, hever is later. For flood plain agement purposes, "new construc- " means structures for which the t of construction" commenced on or after the effective date of a flood plain management regulation adopted by a community.

"100-year flood" see *"base flood."*

"Participating community," also known as an "eligible community," means a community in which the Administrator has authorized the sale of flood insurance.

"Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

"Policy" means the Standard Flood Insurance Policy.

"Premium" means the total premium payable by the insured for the coverage or coverages provided under the policy. The calculation of the premium may be based upon either chargeable rates or risk premium rates, or a combination of both.

"Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

"Principally above ground" means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

"Program" means the National Flood Insurance Program authorized by 42 U.S.C. 4001-4128.

"Program deficiency" means a defect in a community's flood plain management regulations or administrative procedures that impairs effective implementation of those flood plain management regulations or of the standards in §§ 60.3, 60.4, 60.5, or 60.6.

"Project cost" means the total financial cost of a flood protection system (including design, land acquisition, construction, fees, overhead, and profits), unless the Federal Insurance Administrator determines a given "cost" not to be a part of such project cost.

"Reference feature" is the receding edge of a bluff or eroding frontal dune, or if such a feature is not present, the normal high-water line or the seaward line of permanent vegetation if a high-water line cannot be identified.

"Regular Program" means the Program authorized by the Act under which risk premium rates are required for the first half of available coverage (also known as "first layer" coverage) for all new construction and substantial improvements started on or after the effective date of the FIRM, or after December 31, 1974, for FIRM's effective on or before that date. All buildings, the construction of which started before the effective date of the FIRM, or before January 1, 1975, for FIRMs effective before that date, are eligible for first layer coverage at either subsidized rates or risk premium rates, whichever are lower. Regardless of date of construction, risk premium rates are always required for the second layer coverage and such coverage is offered only after the Administrator has completed a risk study for the community.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

"Remedy a violation" means to bring the structure or other development into compliance with State or local flood plain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

"Risk premium rates" mean those rates established by the Administrator pursuant to individual community studies and investigations which are undertaken to provide flood insurance in accordance with section 1307 of the Act and the accepted actuarial principles. "Risk premium rates" include provisions for operating costs and allowances.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Sand dunes" mean naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Scientifically incorrect". The methodology(ies) and/or assumptions which have been utilized are inappropriate for the physical processes being evaluated or are otherwise erroneous.

"Second layer coverage" means an additional limit of coverage equal to the amounts made available under the Emergency Program, and made available under the Regular Program.

"Servicing company" means a corporation, partnership, association, or any other organized entity which contracts with the Federal Insurance Administration to service insurance policies under the National Flood Insurance Program for a particular area.

"Sheet flow area"—see *"area of shallow flooding."*

"60-year setback" means a distance equal to 60 times the average annual long term recession rate at a site, measured from the reference feature.

"Special hazard area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M or E.

"Standard Flood Insurance Policy" means the flood insurance policy issued by the Federal Insurance Administrator, or an insurer pursuant to an arrangement with the Administrator pursuant to Federal statutes and regulations.

"Start of Construction" (for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348)), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the instal-

lation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

"State" means any State, the District of Columbia, the territories and possessions of the United States, the Commonwealth of Puerto Rico, and the Trust Territory of the Pacific Islands.

"State coordinating agency" means the agency of the state government, or other office designated by the Governor of the state or by state statute at the request of the Administrator to assist in the implementation of the National Flood Insurance Program in that state.

"Storm cellar" means a space below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornado or similar wind storm activity.

"Structure" means, for flood plain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. "Structure" for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

"Subsidized rates" mean the rates established by the Administrator volving in the aggregate a subsidization by the Federal Government.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"30-year setback" means a distance equal to 30 times the average annual long term recession rate at a site, measured from the reference feature.

"Technically incorrect". The methodology(ies) utilized has been erroneously applied due to mathematical or measurement error, changed physical conditions, or insufficient quantity or quality of input data.

"V Zone"—see "coastal high hazard area."

"Variance" means a grant of relief by a community from the terms of a flood plain management regulation.

"Violation" means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

"Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where speci-

fied) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

"Zone of imminent collapse" means an area subject to erosion adjacent to the shoreline of an ocean, bay, or lake and within a distance equal to 10 feet plus 5 times the average annual long-term erosion rate for the site, measured from the reference feature.

[41 FR 46968, Oct. 26, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 59.1, see the List of Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 52 FR 25372, June 30, 1987, the defintions for "*Existing manufactured home park or subdivision*" and "*Expansion to an existing manufactured home park or subdivision*" were added to § 59.1, effective from June 30, 1987 until March 31, 1988. At 52 FR 33411, Sept. 3, 1987 these amendments were extended through September 30, 1988, and at 53 FR 25332 , July 6, 1988 were again extended through July 31, 1989.

§ 59.2 Description of program.

(a) The National Flood Insurance Act of 1968 was enacted by Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448, August 1, 1968) to provide previously unavailable flood insurance protection to property owners in flood-prone areas. Mudslide (as defined in § 59.1) protection was added to the Program by the Housing and Urban Development Act of 1969 (Pub. L. 91-152, December 24, 1969). Flood-related erosion (as defined in § 59.1) protection was added to the Program by the Flood Disaster Protection Act of 1973 (Pub. L. 93-234, December 31, 1973). The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or federally-related financial assistance for acquisition or construction purposes with respect to insurable buildings and mobile homes within an identified special flood, mudslide (i.e., mudflow), or flood-related erosion hazard area that is located within any community participating in the Program. The Act also requires that on and after July 1, 1975, or one year after a community has been formally notified by the Administrator of its identification as community containing one or more special flood, mudslide (i.e., mudflow), or flood-related erosion hazard areas, no such Federal financial assistance, shall be provided within such an area unless the community in which the area is located is then participating in the Program, subject to certain exceptions. See FIA published Guidelines at § 59.4(c).

(b) To qualify for the sale of federally-subsidized flood insurance a community must adopt and submit to the Administrator as part of its application, flood plain management regulations, satisfying at a minimum the criteria set forth at Part 60 of this subchapter, designed to reduce or avoid future flood, mudslide (i.e., mudflow) or flood-related erosion damages. These regulations must include effective enforcement provisions.

(c) Minimum requirements for adequate flood plain management regulations are set forth in § 60.3 for flood-prone areas, in § 60.4 for mudslide (i.e., mudflow) areas and in § 60.5 for flood-related erosion areas. Those applicable requirements and standards are based on the amount of technical information available to the community.

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 59.3 Emergency program.

The 1968 Act required a risk study to be undertaken for each community before it could become eligible for the sale of flood insurance. Since this requirement resulted in a delay in providing insurance, the Congress, in section 408 of the Housing and Urban Development Act of 1969 (Pub. L. 91-152, December 24, 1969), established an Emergency Flood Insurance Program as a new section 1336 of the National Flood Insurance Act (42 U.S.C. 4056) to permit the early sale of insurance in flood-prone communities. The emergency program does not affect the requirement that a community must adopt adequate flood plain management regulations pursuant to Part 60 of this subchapter but permits insurance to be sold before a study is conducted to determine risk premium rates for the community. The program still requires upon the effective date of a FIRM the charging of risk premium rates for all new construction and substantial improvements and for higher limits of coverage for existing structures.

[43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543, Sept. 29, 1983]

§ 59.4 References.

(a) The following are statutory references for the National Flood Insurance Program, under which these regulations are issued:

(1) National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968), Pub. L. 90-448, approved August 1, 1968, 42 U.S.C. 4001 et seq.

(2) Housing and Urban Development Act of 1969 (Pub. L. 91-152, approved December 24, 1969).

(3) Flood Disaster Protection Act of 1973 (87 Stat. 980), Pub. L. 93-234, approved December 31, 1973.

(4) Section 816 of the Housing and Community Development Act of 1974 (87 Stat. 975), Pub. L. 93-383, approved August 22, 1974.

(5) Pub. L. 5-128 (effective October 12, 1977).

(6) The above statutes are included in 42 U.S.C. 4001 et seq.

(b) The following are references relevant to the National Flood Insurance Program:

(1) Executive Order 11988 (Floodplain Management, dated May 24, 1977 (42 FR 26951, May 25, 1977)).

(2) The Flood Control Act of 1960 (Pub. L. 86-645).

(3) Title II, section 314 of Title III and section 406 of Title IV of the Disaster Relief Act of 1974 (Pub. L. 93-288).

(4) Coastal Zone Management Act (Pub. L. 92-583), as amended Pub. L. 94-370.

(5) Water Resources Planning Act (Pub. L. 89-90), as amended Pub. L. 94-112 (October 16, 1975).

(6) Title I, National Environmental Policy Act (Pub. L. 91-190).

(7) Land and Water Conservation Fund Act (Pub. L. 89-578), and subsequent amendments thereto.

(8) Water Resources Council, Principals and Standards for Planning, Water and Related Land Resources (38 FR 24778-24869, September 10, 1973).

(9) Executive Order 11593 (Protection and Enchancement of the Cultural Environment), dated May 13, 1971 (36 FR 8921, May 15, 1971).

(10) 89th Cong., 2nd Session, H.D. 465.

(11) Required land use element for comprehensive planning assistance under section 701 of the Housing Act of 1954, as amended by the Housing and Community Development Act of 1974 (24 CFR 600.72).

(12) Executive Order 11990 (Protection of Wetlands, dated May 24, 1977 (42 FR 26951, May 25, 1977)).

(13) Water Resources Council (Guidance for Floodplain Management) (42 FR 52590, September 30, 1977).

(14) Unified National Program for Floodplain Management of the United States Water Resources Council, July 1976.

(c) The following reference guidelines represent the views of the Federal Insurance Administration with respect to the mandatory purchase of flood insurance under section 102 of the Flood Disaster Protection Act of 1973: Mandatory Purchase of Flood Insurance Guidelines (39 FR 26186-26193, July 17, 1974; 40 FR 16710, April 14, 1975; 40 FR 54277-54278, November 21, 1975; and 41 FR 2426, January 16, 1976).

[41 FR 46968, Oct. 26, 1976, as amended at 43 FR 7140, Feb. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979]

Subpart B—Eligibility Requirements

§ 59.21 Purpose of subpart.

This subpart lists actions that must be taken by a community to become eligible and to remain eligible for the Program.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 59.22 Prerequisites for the sale of flood insurance.

(a) To qualify for flood insurance availability a community shall apply for the entire area within its jurisdiction, and shall submit:

(1) Copies of legislative and executive actions indicating a local need for flood insurance and an explicit desire to participate in the National Flood Insurance Program;

(2) Citations to State and local statutes and ordinances authorizing actions regulating land use and copies of the local laws and regulations cited;

(3) A copy of the flood plain management regulations the community has adopted to meet the requirements of §§ 60.3, 60.4 and/or § 60.5 of this subchapter. This submission shall include copies of any zoning, building, and subdivision regulations, health codes, special purpose ordinances (such as a flood plain ordinance, grading ordinance, or flood-related erosion control ordinance), and any other corrective and preventive measures enacted to reduce or prevent flood, mudslide (i.e., mudflow) or flood-related erosion damage;

(4) A list of the incorporated communities within the applicant's boundaries;

(5) Estimates relating to the community as a whole and to the flood, mudslide (i.e., mudflow) and flood-related erosion prone areas concerning:

(i) Population;

(ii) Number of one to four family residences;

(iii) Number of small businesses; and

(iv) Number of all other structures.

(6) Address of a local repository, such as a municipal building, where the Flood Hazard Boundary Maps (FHBM's) and Flood Insurance Rate Maps (FIRM's) will be made available for public inspection;

(7) A summary of any State or Federal activities with respect to flood plain, mudslide (i.e., mudflow) or flood-related erosion area management within the community, such as federally-funded flood control projects and State-administered flood plain management regulations;

(8) A commitment to recognize and duly evaluate flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards in all official actions in the areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards and to take such other official action reasonably necessary to carry out the objectives of the program; and

(9) A commitment to:

(i) Assist the Administrator at his/her request, in his/her delineation of the limits of the areas having special flood, mudslide (i.e., mudflow) or flood-related erosion hazards;

(ii) Provide such information concerning present uses and occupancy of the flood plain, mudslide (i.e., mudflow) or flood-related erosion areas as the Administrator may request;

(iii) Maintain for public inspection and furnish upon request, for the determination of applicable flood insurance risk premium rates within all areas having special flood hazards identified on a FHBM or FIRM, any certificates of floodproofing, and information on the elevation (in relation to mean sea level) of the level of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement, and if the structure has been floodproofed, the elevation (in relation to mean sea level) to which the structure was floodproofed;

(iv) Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map, and identify flood plain, mudslide (i.e., mudflow) or flood-related erosion areas, and cooperate with neighboring communities with respect to the management of adjoining flood plain, mudslide (i.e., mudflow) and/or flood-related erosion areas in order to prevent aggravation of existing hazards;

(v) Upon occurrence, notify the Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce flood plain management regulations for a particular area. In order that all FHBM's and FIRM's accurately represent the community's boundaries, include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished flood plain management regulatory authority.

(b) An applicant shall legislatively:

(1) Appoint or designate the agency or official with the responsibility, authority, and means to implement the commitments made in paragraph (a) of this section, and

(2) Designate the official responsible to submit a report to the Administrator concerning the community participation in the Program, including, but not limited to the development and implementation of flood plain management regulations. This report shall be submitted annually or biennially as determined by the Administrator.

(c) The documents required by paragraph (a) of this section and evidence of the actions required by paragraph (b) of this section shall be submitted to the Federal Emergency Management Agency, Washington DC 20472.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979 and amended at 48 FR 29318, June 24, 1983; 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 33656, Aug. 24, 1984; 50 FR 36023, Sept. 4, 1985]

§ 59.23 Priorities for the sale of flood insurance under the regular program.

Flood-prone, mudslide (i.e., mudflow) and flood-related erosion prone communities are placed on a register of areas eligible for ratemaking studies and then selected from this register for ratemaking studies on the basis of the following considerations—

(a) Recommendations of State officials;

(b) Location of community and urgency of need for flood insurance;

(c) Population of community and intensity of existing or proposed development of the flood plain, the mudslide (i.e., mudflow) and the flood-related erosion area;

(d) Availability of information on the community with respect to its flood, mudslide (i.e., mudflow) and flood-related erosion characteristics and previous losses;

(e) Extent of State and local progress in flood plain, mudslide (i.e., mudflow) area and flood-related erosion area management, including adoption of flood plain management regulations consistent with related ongoing programs in the area.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 59.24 Suspension of community eligibility.

(a) A community eligible for the sale of flood insurance shall be subject to suspension from the Program for failing to submit copies of adequate flood plain management regulations meeting the minimum requirements of paragraphs (b), (c), (d) or (e) of § 60.3 or paragraph (b) of § 60.4 or § 60.5, within six months from the date the Administrator provides the data upon which the flood plain regulations for the applicable paragraph shall be based. Where there has not been any submission by the community, the Administrator shall notify the community that 90 days remain in the six month period in order to submit adequate flood plain management regulations. Where there has been an inadequate submission, the Administrator shall notify the community of the specific deficiencies in its submitted flood plain management regulations and inform the community of the amount of time remaining within the six month period. If, subsequently, copies of adequate flood plain management regulations are not received by the Administrator, he shall, no later than 30 days before the expiration of the original six month period, provide written notice to the community and to the state and assure publication in the FEDERAL REGISTER under Part 64 of this subchapter, of the community's loss of eligibility for the sale of flood insurance, such suspension to become effective upon the expiration of the six month period. Should the community remedy the defect and the Administrator receive copies of adequate flood plain management regulations within the notice period, the suspension notice shall be rescinded by the Administrator. If the Administrator receives notice from the State that it has enacted adequate flood plain management regulations for the community within the notice period, the suspension notice shall be rescinded by the Administrator. The community's eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(b) A community eligible for the sale of flood insurance which fails to adequately enforce flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be subject to probation. Probation shall represent formal notification to the community that the Administrator regards the community's flood plain management program as not compliant with NFIP criteria. Prior to imposing probation, the Administrator (1) shall inform the community upon 90 days prior written notice of the impending probation and of the specific program deficiencies and violations relative to the failure to enforce, (2) shall, at least 60 days before probation is to begin, issue a press release to local media explaining the reasons for and the effects of probation, and (3) when the probation is to begin on or after October 1, 1986, shall, at least 90 days before probation is to begin, advise all policyholders in the community of the impending probation and the additional premium that will be charged, as provided in this paragraph, on policies sold or renewed during the period of probation. During this 90-day period the community shall have the opportunity to avoid probation by demonstrating compliance with Program requirements, or by correcting Program deficiencies and remedying all violations to the maximum extent possible. If, at the end of the 90-day period, the Administrator determines that the community has failed to do so, the probation shall go into effect. Probation may be continued for up to one year after the community corrects all Program deficiencies and remedies all violations to the maximum extent possible. Flood insurance may be sold or renewed in the community while it is on probation. Where a policy covers property located in a community placed on probation on or after October 1, 1986, an additional premium of $25.00 shall be charged on each such policy initially issued, based upon the submission by the applicant of an application for flood insurance, or renewed, based upon the policyholder's response to a turn-around renewal premium notice or policyholder application notice, during the one-year period beginning on the date the community is placed on probation and during any successive one year periods during which the community remains on probation for any part thereof.

(c) A community eligible for the sale of flood insurance which fails to adequately enforce its flood plain management regulations meeting the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 and does not correct its Program deficiencies and remedy all violations to the maximum extent possible in accordance with compliance deadlines established during a period of probation shall be subject to suspension of its Program eligibility. Under such circumstances, the Administrator shall grant the community 30 days in which to show cause why it should not be suspended. The Administrator may conduct a hearing, written or oral, before commencing suspensive action. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. In the event of impending suspension, the Administrator shall issue a press release to the local media explaining the reasons and effects of the suspension. The community's eligibility shall only be reinstated by the Administrator upon his receipt of a local legislative or executive measure reaffirming the community's formal intent to adequately enforce the flood plain management requirements of this subpart, together with evidence of action taken by the community to correct Program deficiencies and remedy to the maximum extent possible those violations which caused the suspension. In certain cases, the Administrator, in order to evaluate the community's performance under the terms of its submission, may withhold reinstatement for a period not to exceed one year from the date of his receipt of the satisfactory submission or place the community on probation as provided for in paragraph (b) of this section.

(d) A community eligible for the sale of flood insurance which repeals its flood plain management regulations, allows its regulations to lapse, or amends its regulations so that they no longer meet the minimum requirements set forth in §§ 60.3, 60.4 and/or 60.5 shall be suspended from the Program. If a community is to be suspended, the Administrator shall inform it upon 30 days prior written notice and upon publication in the FEDERAL REGISTER under Part 64 of this subchapter of its loss of eligibility for the sale of flood insurance. The community eligibility shall remain terminated after suspension until copies of adequate flood plain management regulations have been received and approved by the Administrator.

(e) A community eligible for the sale of flood insurance may withdraw from the Program by submitting to the Administrator a copy of a legislative action that explicitly states its desire to withdraw from the National Flood Insurance Program. Upon receipt of a certified copy of a final legislative action, the Administrator shall withdraw the community from the Program and publish in the FEDERAL REGISTER under Part 64 of this subchapter its loss of eligibility for the sale of flood insurance. A community that has withdrawn from the Program may be reinstated if its submits the application materials specified in § 59.22(a).

(f) If during a period of ineligibility under paragraphs (a), (d), or (e) of this section, a community has permitted actions to take place that have aggravated existing flood plain, mudslide (i.e., mudflow) and/or flood related erosion hazards, the Administrator may withhold reinstatement until the community submits evidence that it has taken action to remedy to the maximum extent possible the increased hazards. The Administrator may also place the reinstated community on probation as provided for in paragraph (b) of this section.

(g) The Administrator shall promptly notify the servicing company and any insurers issuing flood insurance pursuant to an arrangement with the Administrator of those communities whose eligibility has been suspended or which have withdrawn from the program. Flood insurance shall not be sold or renewed in those communities. Policies sold or renewed within a community during a period of ineligibility are deemed to be voidable by the Administrator whether or not the parties to sale or renewal had actual notice of the ineligibility.

[41 FR 46968, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36023, Sept. 4, 1985]

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

Subpart A—Requirements for Flood Plain Management Regulations

Sec.
60.1 Purpose of subpart.
60.2 Minimum compliance with flood plain management criteria.
60.3 Flood plain management criteria for flood-prone areas.
60.4 Flood plain management criteria for mudslide (i.e., mudflow) -prone areas.
60.5 Flood plain management criteria for flood-related erosion-prone areas.
60.6 Variances and exceptions.
60.7 Revisions of criteria for flood plain management regulations.
60.8 Definitions.

Subpart B—Requirements for State Flood Plain Management Regulations

60.11 Purpose of this subpart.
60.12 Flood plain management criteria for State-owned properties in special hazard areas.
60.13 Noncompliance.

Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone, and Flood-Related Erosion-Prone Areas

60.21 Purpose of this subpart.
60.22 Planning considerations for flood-prone areas.
60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.
60.24 Planning considerations for flood-related erosion-prone areas.
60.25 Designation, duties, and responsibilities of State Coordinating Agencies.
60.26 Local coordination.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

Source: 41 FR 46975, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—Requirements for Flood Plain Management Regulations

§ 60.1 Purpose of subpart.

(a) The Act provides that flood insurance shall not be sold or renewed under the program within a community, unless the community has adopted adequate flood plain management regulations consistent with Federal criteria. Responsibility for establishing such criteria is delegated to the Administrator.

(b) This subpart sets forth the criteria developed in accordance with the Act by which the Administrator will determine the adequacy of a community's flood plain management regulations. These regulations must be legally-enforceable, applied uniformly throughout the community to all privately and publicly owned land within flood-prone, mudslide (i.e., mudflow) or flood-related erosion areas, and the community must provide that the regulations take precedence over any less restrictive conflicting local laws, ordinances or codes. Except as otherwise provided in § 60.6, the adequacy of such regulations shall be determined on the basis of the standards set forth in § 60.3 for flood-prone areas, § 60.4 for mudslide areas and § 60.5 for flood-related erosion areas.

(c) Nothing in this subpart shall be construed as modifying or replacing the general requirement that all eligible communities must take into account flood, mudslide (i.e., mudflow) and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use.

(d) The criteria set forth in this subpart are minimum standards for the adoption of flood plain management regulations by flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone communities. Any community may exceed the minimum criteria under this part by adopting more comprehensive flood plain management regulations utilizing the standards such as contained in Subpart C of this part. In some instances, community officials may have access to information or knowledge of conditions that require, particularly for human safety, higher standards than the minimum criteria set forth in Subpart A of this part. Therefore, any flood plain management regulations adopted by a State or a community which are more restrictive than the criteria set forth in this part are encouraged and shall take precedence.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 60.2 Minimum compliance with flood plain management criteria.

(a) A flood-prone community applying for flood insurance eligibility shall meet the standards of § 60.3(a) in order to become eligible if a FHBM has not been issued for the community at the time of application. Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in § 60.3 (b), (c), (d), or (e) in which to meet the requirements of the applicable paragraph. If a community has received a FHBM, but has not yet applied for Program eligibility, the community shall apply for eligibility directly under the standards set forth in § 60.3(b). Thereafter, the community will be given a period of six months from the date the Administrator provides the data set forth in § 60.3 (c), (d), or (e) in which to meet the requirements of the applicable paragraph.

(b) A mudslide (i.e., mudflow)-prone community applying for flood insurance eligibility shall meet the standards of § 60.4(a) to become eligible. Thereafter, the community will be given a period of six months from the date the mudslide (i.e., mudflow) areas having special mudslide hazards are delineated in which to meet the requirements of § 60.4(b).

(c) A flood-related erosion-prone community applying for flood insurance eligibility shall meet the standards of § 60.5(a) to become eligible. Thereafter, the community will be given a period of six months from the date the flood-related erosion areas having special erosion hazards are delineated in which to meet the requirements of § 60.5(b).

(d) Communities identified in Part 65 of this subchapter as containing more than one type of hazard (e.g., any combination of special flood, mudslide (i.e., mudflow), and flood-related erosion hazard areas) shall adopt flood plain management regulations for each type of hazard consistent with the requirements of §§ 60.3, 60.4 and 60.5.

(e) Local flood plain management regulations may be submitted to the State Coordinating Agency designated pursuant to § 60.25 for its advice and concurrence. The submission to the State shall clearly describe proposed enforcement procedures.

(f) The community official responsible for submitting annual or biennial reports to the Administrator pursuant to § 59.22(b)(2) of this subchapter shall also submit copies of each annual or biennial report to any State Coordinating Agency.

(g) A community shall assure that its comprehensive plan is consistent with the flood plain management objectives of this part.

(h) The community shall adopt and enforce flood plain management regulations based on data provided by the Administrator. Without prior approval of the Administrator, the community shall not adopt and enforce flood plain management regulations based upon modified data reflecting natural or man-made physical changes.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 29318, June 24, 1983; 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36024, Sept. 4, 1985]

§ 60.3 Flood plain management criteria for flood-prone areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special flood hazard area designations and water surface elevations have been furnished by the Administrator, they shall apply. The symbols defining such special flood hazard designations are set forth in § 64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-prone areas adopted by a particular community depend on the amount of technical data formally provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not defined the special flood hazard areas within a community, has not provided water surface elevation data, and has not provided sufficient data to identify the floodway or coastal high hazard area, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall:

(1) Require permits for all proposed construction or other development in the community, including the placement of manufactured homes, so that it may determine whether such construction or other development is proposed within flood-prone areas;

(2) Review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

(3) Review all permit applications to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall (i) be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages, and (iv) be constructed with electrical, heating, ventilation,

plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) Review subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a flood-prone area, any such proposals shall be reviewed to assure that (i) all such proposals are consistent with the need to minimize flood damage within the flood-prone area, (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and (iii) adequate drainage is provided to reduce exposure to flood hazards;

(5) Require within flood-prone areas new and replacement water supply systems to be designed to minimize or eliminate infiltration of flood waters into the systems; and

(6) Require within flood-prone areas (i) new and replacement sanitary sewage systems to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and (ii) onsite waste disposal systems to be located to avoid impairment to them or contamination from them during flooding.

(b) When the Administrator has designated areas of special flood hazards (A zones) by the publication of a community's FHBM or FIRM, but has neither produced water surface elevation data nor identified a floodway or coastal high hazard area, the community shall:

(1) Require permits for all proposed construction and other developments including the placement of manufactured homes, within Zone A on the community's FHBM or FIRM;

(2) Require the application of the standards in paragraphs (a) (2), (3), (4), (5) and (6) of this section to development within Zone A on the community's FHBM or FIRM;

(3) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data;

(4) Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source, including data developed pursuant to paragraph (b)(3) of this section, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the community's FHBM or FIRM meet the standards in paragraphs (c)(2), (c)(3), (c)(5), (c)(12), (d)(2) and (d)(3) of this section;

(5) Where base flood elevation data are utilized, within Zone A on the community's FHBM or FIRM:

(i) Obtain the elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and

(ii) Obtain, if the structure has been floodproofed in accordance with paragraph (c)(3)(ii) of this section, the elevation (in relation to mean sea level) to which the structure was floodproofed, and

(iii) Maintain a record of all such information with the official designated by the community under § 59.22 (a)(9)(iii);

(6) Notify, in riverine situations, adjacent communities and the State Coordinating Office prior to any alteration or relocation of a watercourse, and submit copies of such notifications to the Administrator;

(7) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained;

(8) Require that all manufactured homes to be placed within Zone A on a community's FHBM or FIRM shall be installed using methods and practices which minimize flood damage. For the purposes of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State

and local anchoring requirements for resisting wind forces.

(c) When the Administrator has provided a notice of final flood elevations for one or more special flood hazard areas on the community's FIRM and, if appropriate, has designated other special flood hazard areas without base flood elevations on the community's FIRM, but has not identified a regulatory floodway or coastal high hazard area, the community shall:

(1) Require the standards of paragraph (b) of this section within all A1-30 zones, AE zones, A zones, AH zones, and AO zones, on the community's FIRM;

(2) Require that all new construction and substantial improvements of residential structures within Zones A1-30, AE and AH zones on the community's FIRM have the lowest floor (including basement) elevated to or above the base flood level, unless the community is granted an exception by the Administrator for the allowance of basements in accordance with § 60.6 (b) or (c);

(3) Require that all new construction and substantial improvements of nonresidential structures within Zones A1-30, AE and AH zones on the community's firm (i) have the lowest floor (including basement) elevated to or above the base flood level or, (ii) together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(4) Provide that where a non-residential structure is intended to be made watertight below the base flood level, (i) a registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of paragraph (c)(3)(ii) or (c)(8)(ii) of this section, and (ii) a record of such certificates which includes the specific elevation (in relation to mean sea level) to which such structures are floodproofed shall be maintained with the official designated by the community under § 59.22(a)(9)(iii);

(5) Require, for all new construction and substantial improvements, that fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(6) Require that all manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of paragraph (b)(8) of this section.

(7) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet if no depth number is specified);

(8) Require within any AO zone on the community's FIRM that all new construction and substantial improvements of nonresidential structures (i) have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two feet

if no depth number is specified), or (ii) together with attendant utility and sanitary facilities be completely floodproofed to that level to meet the floodproofing standard specified in § 60.3(c)(3)(ii);

(9) Require within any A99 zones on a community's FIRM the standards of paragraphs (a)(1) through (a)(4)(i) and (b)(5) through (b)(9) of this section;

(10) Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(11) Require within Zones AH and AO, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(12) Require that all manufactured homes to be placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provisions of paragraph (b)(8) of this section. This paragraph applies to manufactured homes to be placed or substantially improved in an expansion to an existing manufactured home park or subdivision. This paragraph does not apply to manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision except where the repair, reconstruction, or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced.

(13) Notwithstanding any other provisions of § 60.3, a community may approve certain development in Zones A1-30, AE, and AH, on the community's FIRM which increase the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision, fulfills the requirements for such a revision as established under the provisions of § 65.12, and receives the approval of the Administrator.

(d) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AO zones, AH zones, A99 zones, and A zones on the community's FIRM, and has provided data from which the community shall designate its regulatory floodway, the community shall:

(1) Meet the requirements of paragraphs (c) (1) through (13) of this section;

(2) Select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one foot at any point;

(3) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge;

(4) Notwithstanding any other provisions of § 60.3, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of the Administrator.

(e) When the Administrator has provided a notice of final base flood elevations within Zones A1-30 and/or AE on the community's FIRM and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified on the community's FIRM coastal high hazard areas by designating Zones V1-30, VE, and/or V, the community shall:

(1) Meet the requirements of paragraphs (c)(1) through (13) of this section;

(2) Within Zones V1-30, VE, and V on a community's FIRM, (i) obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures, and whether or not such structures contain a basement, and (ii) maintain a record of all such information with the official designated by the community under § 59.22(a)(9)(iii);

(3) Provide that all new construction within Zones V1-30, VE, and V on the community's FIRM is located landward of the reach of mean high tide;

(4) Provide that all new construction and substantial improvements in Zones V1-30 and VE, and also Zone V if base flood elevation data is available, on the community's FIRM, are elevated on pilings and columns so that (i) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; and (ii) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equalled or exceeded in any given year (100-year mean recurrence interval). A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of paragraphs (e)(4)(i) and (ii) of this section.

(5) Provide that all new construction and substantial improvements within Zones V1-30, VE, and V on the community's FIRM have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this section, a breakway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(i) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and,

(ii) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum wind and water loading values to be used in this determination shall each have one percent chance of being equalled or exceeded in any given year (100-year mean recurrence interval).

Such enclosed space shall be useable solely for parking of vehicles, building access, or storage.

(6) Prohibit the use of fill for structural support of buildings within Zones V1-30, VE, and V on the community's FIRM;

(7) Prohibit man-made alteration of sand dunes and mangrove stands within Zones V1-30, VE, and V on the community's FIRM which would increase potential flood damage.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 46 FR 1274, Jan. 6, 1981; 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 33656, Aug. 24, 1984; 50 FR 36024, Sept. 4, 1985; 51 FR 30307, Aug. 25, 1986; 52 FR

24372, June 30, 1987; 52 FR 33411, Sept. 3, 1987; 53 FR 16276, May 6, 1988]

EDITORIAL NOTE: At 52 FR 24372, June 30, 1987, § 60.3 was amended by suspending paragraph (c)(6) and adding paragraph (c)(12), effective from June 30, 1987 until March 31, 1988. At 52 FR 33411, Sept. 3, 1987 these amendments were extended through September 30, 1988, and at 53 FR 25332, July 6, 1988 were further extended until July 31, 1989.

§ 60.4 Flood plain management criteria for mudslide (i.e., mudflow)-prone areas.

The Administrator will provide the data upon which flood plain management regulations shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources pending receipt of data from the Administrator. However, when special mudslide (i.e., mudflow) hazard area designations have been furnished by the Administrator, they shall apply. The symbols defining such special mudslide (i.e., mudflow) hazard designations are set forth in § 64.3 of this subchapter. In all cases, the minimum requirements for mudslide (i.e., mudflow)-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as an area having special mudslide (i.e., mudflow) hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

(1) Require permits for all proposed construction or other development in the community so that it may determine whether development is proposed within mudslide (i.e., mudflow)-prone areas;

(2) Require review of each permit application to determine whether the proposed site and improvements will be reasonably safe from mudslides (i.e., mudflows). Factors to be considered in making such a determination should include but not be limited to (i) the type and quality of soils, (ii) any evidence of ground water or surface water problems, (iii) the depth and quality of any fill, (iv) the overall slope of the site, and (v) the weight that any proposed structure will impose on the slope;

(3) Require, if a proposed site and improvements are in a location that may have mudslide (i.e., mudflow) hazards, that (i) a site investigation and further review be made by persons qualified in geology and soils engineering, (ii) the proposed grading, excavations, new construction, and substantial improvements are adequately designed and protected against mudslide (i.e., mudflow) damages, (iii) the proposed grading, excavations, new construction and substantial improvements do not aggravate the existing hazard by creating either on-site or off-site disturbances, and (iv) drainage, planting, watering, and maintenance be such as not to endanger slope stability.

(b) When the Administrator has delineated Zone M on the community's FIRM, the community shall:

(1) Meet the requirements of paragraph (a) of this section; and

(2) Adopt and enforce a grading ordinance or regulation in accordance with data supplied by the Administrator which (i) regulates the location of foundation systems and utility systems of new construction and substantial improvements, (ii) regulates the location, drainage and maintenance of all excavations, cuts and fills and planted slopes, (iii) provides special requirements for protective measures including but not necessarily limited to retaining walls, buttress fills, subdrains, diverter terraces, benchings, etc., and (iv) requires engineering drawings and specifications to be submitted for all corrective measures, accompanied by supporting soils engineering and geology reports. Guidance may be obtained from the provisions of the 1973 edition and any subsequent edition of the Uniform Building Code, sections 7001 through 7006, and 7008 through 7015. The Uniform Building Code is published by the International Conference of Building

Officials, 50 South Los Robles, Pasadena, California 91101.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 60.5 Flood plain management criteria for flood-related erosion-prone areas.

The Administrator will provide the data upon which flood plain management regulations for flood-related erosion-prone areas shall be based. If the Administrator has not provided sufficient data to furnish a basis for these regulations in a particular community, the community shall obtain, review, and reasonably utilize data available from other Federal, State or other sources, pending receipt of data from the Administrator. However, when special flood-related erosion hazard area designations have been furnished by the Administrator they shall apply. The symbols defining such special flood-related erosion hazard designations are set forth in § 64.3 of this subchapter. In all cases the minimum requirements governing the adequacy of the flood plain management regulations for flood-related erosion-prone areas adopted by a particular community depend on the amount of technical data provided to the community by the Administrator. Minimum standards for communities are as follows:

(a) When the Administrator has not yet identified any area within the community as having special flood-related erosion hazards, but the community has indicated the presence of such hazards by submitting an application to participate in the Program, the community shall

(1) Require the issuance of a permit for all proposed construction, or other development in the area of flood-related erosion hazard, as it is known to the community;

(2) Require review of each permit application to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing flood-related erosion hazard; and

(3) If a proposed improvement is found to be in the path of flood-related erosion or to increase the erosion hazard, require the improvement to be relocated or adequate protective measures to be taken which will not aggravate the existing erosion hazard.

(b) When the Administrator has delineated Zone E on the community's FIRM, the community shall

(1) Meet the requirements of paragraph (a) of this section; and

(2) Require a setback for all new development from the ocean, lake, bay, riverfront or other body of water, to create a safety buffer consisting of a natural vegetative or contour strip. This buffer will be designated by the Administrator according to the flood-related erosion hazard and erosion rate, in conjunction with the anticipated "useful life" of structures, and depending upon the geologic, hydrologic, topographic and climatic characteristics of the community's land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 60.6 Variances and exceptions.

(a) The Administrator does not set forth absolute criteria for granting variances from the criteria set forth in §§ 60.3, 60.4, and 60.5. The issuance of a variance is for flood plain management purposes only. Insurance premium rates are determined by statute according to actuarial risk and will not be modified by the granting of a variance. The community, after examining the applicant's hardships, shall approve or disapprove a request. While the granting of variances generally is limited to a lot size less than one-half acre (as set forth in paragraph (a)(2) of this section), deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. The Administrator may review a community's findings justifying the granting of variances, and if that review indicates a pattern inconsistent with the objectives of sound flood plain management, the Administrator may take appropriate action under § 59.24(b) of this subchapter. Variances may be issued by a community for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a State Inventory of Historic Places, without regard to the procedures set forth in this section. Procedures for the granting of variances by a community are as follows:

(1) Variances shall not be issued by a community within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result;

(2) Variances may be issued by a community for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the procedures of paragraphs (a) (3), (4), (5) and (6) of this section;

(3) Variances shall only be issued by a community upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances;

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(5) A community shall notify the applicant in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required in paragraph (a)(6) of this section; and

(6) A community shall (i) maintain a record of all variance actions, including justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to the Administrator.

(7) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that (i) the criteria of paragraphs (a)(1) through (a)(4) of this section are met, and (ii) the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(b)(1) The requirement that each flood-prone, mudslide (i.e., mudflow)-prone, and flood-related erosion prone community must adopt and submit adequate flood plain management regulations as a condition of initial and continued flood insurance eligibility is statutory and cannot be waived, and such regulations shall be adopted by a community within the time periods specified in §§ 60.3, 60.4 or § 60.5. However, certain exceptions from the standards contained in this subpart may be permitted where the Administrator recognizes that, because of extraordinary circumstances, local conditions may render the application of certain standards the cause for severe hardship and gross inequity for a particular community. Consequently, a community proposing the adoption of flood plain management regulations which vary from the standards set forth in §§ 60.3, 60.4, or § 60.5, shall explain in writing to the Administrator the nature and extent of and the reasons for the exception request and shall include sufficient supporting economic, environmental, topographic, hydrologic, and other scientific and technical data, and data with respect to the impact on public safety and the environment.

(2) The Administrator shall prepare a Special Environmental Clearance to determine whether the proposal for an exception under paragraph (b)(1) of this section will have significant

impact on the human environment. The decision whether an Environmental Impact Statement or other environmental document will be prepared, will be made in accordance with the procedures set out in 44 CFR Part 10. Ninety or more days may be required for an environmental quality clearance if the proposed exception will have significant impact on the human environment thereby requiring an EIS.

(c) A community may propose flood plain management measures which adopt standards for floodproofed residential basements below the base flood level in zones A1-30, AH, AO, and AE which are not subject to tidal flooding. Nothwithstanding the requirements of paragraph (b) of this section the Administrator may approve the proposal provided that:

(1) The community has demonstrated that areas of special flood hazard in which basements will be permitted are subject to shallow and low velocity flooding and that there is adequate flood warning time to ensure that all residents are notified of impending floods. For the purposes of this paragraph flood characteristics must include:

(i) Flood depths that are five feet or less for developable lots that are contiguous to land above the base flood level and three feet or less for other lots;

(ii) Flood velocities that are five feet per second or less; and

(iii) Flood warning times that are 12 hours or greater. Flood warning times of two hours or greater may be approved if the community demonstrates that it has a flood warning system and emergency plan in operation that is adequate to ensure safe evacuation of flood plain residents.

(2) The community has adopted flood plain management measures that require that new construction and substantial improvements of residential structures with basements in zones A1-30, AH, AO, and AE shall:

(i) Be designed and built so that any basement area, together with attendant utilities and sanitary facilities below the floodproofed design level, is watertight with walls that are impermeable to the passage of water without human intervention. Basement walls shall be built with the capacity to resist hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from flooding to the floodproofed design level, and shall be designed so that minimal damage will occur from floods that exceed that level. The floodproofed design level shall be an elevation one foot above the level of the base flood where the difference between the base flood and the 500-year flood is three feet or less and two feet above the level of the base flood where the difference is greater than three feet.

(ii) Have the top of the floor of any basement area no lower than five feet below the elevation of the base flood;

(iii) Have the area surrounding the structure on all sides filled to or above the elevation of the base flood. Fill must be compacted with slopes protected by vegetative cover;

(iv) Have a registered professional engineer or architect develop or review the building's structual design, specifications, and plans, including consideration of the depth, velocity, and duration of flooding and type and permeability of soils at the building site, and certify that the basement design and methods of construction proposed are in accordance with accepted standards of practice for meeting the provisions of this paragraph;

(v) Be inspected by the building inspector or other authorized representative of the community to verify that the structure is built according to its design and those provisions of this section which are verifiable.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44543 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36025, Sept. 4, 1985; 51 FR 30308, Aug. 25, 1986]

§ 60.7 Revisions of criteria for flood plain management regulations.

From time to time Part 60 may be revised as experience is acquired under the Program and new information becomes available. Communities will be given six months from the effective date of any new regulation to revise their flood plain management regulations to comply with any such changes.

§ 60.8 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

Subpart B—Requirements for State Flood Plain Management Regulations

§ 60.11 Purpose of this subpart.

(a) A State is considered a "community" pursuant to § 59.1 of this subchapter; and, accordingly, the Act provides that flood insurance shall not be sold or renewed under the Program unless a community has adopted adequate flood plain management regulations consistent with criteria established by the Administrator.

(b) This subpart sets forth the flood plain management criteria required for State-owned properties located within special hazard areas identified by the Administrator. A State shall satisfy such criteria as a condition to the purchase of a Standard Flood Insurance Policy for a State-owned structure or its contents, or as a condition to the approval by the Administrator, pursuant to Part 75 of this subchapter, of its plan of self-insurance.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 60.12 Flood plain management criteria for State-owned properties in special hazard areas.

(a) The State shall comply with the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5. A State either shall:

(1) Comply with the flood plain management requirements of all local communities participating in the program in which State-owned properties are located; or

(2) Establish and enforce flood plain management regulations which, at a minimum, satisfy the criteria set forth in §§ 60.3, 60.4, and 60.5.

(b) The procedures by which a state government adopts and administers flood plain management regulations satisfying the criteria set forth in §§ 60.3, 60.4 and 60.5 may vary from the procedures by which local governments satisfy the criteria.

(c) If any State-owned property is located in a non-participating local community, then the State shall comply with the requirements of paragraph (a)(2) of this section for the property.

§ 60.13 Noncompliance.

If a State fails to submit adequate flood plain management regulations applicable to State-owned properties pursuant to § 60.12 within six months of the effective date of this regulation, or fails to adequately enforce such regulations, the State shall be subject to suspensive action pursuant to § 59.24. Where the State fails to adequately enforce its flood plain management regulations, the Administrator shall conduct a hearing before initiating such suspensive action.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

Subpart C—Additional Considerations in Managing Flood-Prone, Mudslide (i.e., Mudflow)-Prone and Flood-Related Erosion-Prone Areas

§ 60.21 Purpose of this subpart.

The purpose of this subpart is to encourage the formation and adoption of overall comprehensive management plans for flood-prone, mudslide (i.e., mudflow)-prone and flood-related erosion-prone areas. While adoption by a community of the standards in this subpart is not mandatory, the community shall completely evaluate these standards.

§ 60.22 Planning considerations for flood-prone areas.

(a) The flood plain management regulations adopted by a community for flood-prone areas should:

(1) Permit only that development of flood-prone areas which (i) is appropriate in light of the probability of flood damage and the need to reduce flood losses, (ii) is an acceptable social and economic use of the land in relation to the hazards involved, and (iii) does not increase the danger to human life;

(2) Prohibit nonessential or improper installation of public utilities and public facilities in flood-prone areas.

(b) In formulating community development goals after the occurrence of a flood disaster, each community shall consider—

(1) Preservation of the flood-prone areas for open space purposes;

(2) Relocation of occupants away from flood-prone areas;

(3) Acquisition of land or land development rights for public purposes consistent with a policy of minimization of future property losses;

(4) Acquisition of frequently flood-damaged structures;

(c) In formulating community development goals and in adopting flood plain management regulations, each community shall consider at least the following factors—

(1) Human safety;

(2) Diversion of development to areas safe from flooding in light of the need to reduce flood damages and in light of the need to prevent environmentally incompatible flood plain use;

(3) Full disclosure to all prospective and interested parties (including but not limited to purchasers and renters) that (i) certain structures are located within flood-prone areas, (ii) variances have been granted for certain structures located within flood-prone areas, and (iii) premium rates applied to new structures built at elevations below the base flood substantially increase as the elevation decreases;

(4) Adverse effects of flood plain development on existing development;

(5) Encouragement of floodproofing to reduce flood damage;

(6) Flood warning and emergency preparedness plans;

(7) Provision for alternative vehicular access and escape routes when normal routes are blocked or destroyed by flooding;

(8) Establishment of minimum floodproofing and access requirements for schools, hospitals, nursing homes, orphanages, penal institutions, fire stations, police stations, communications centers, water and sewage pumping stations, and other public or quasi-public facilities already located in the flood-prone area, to enable them to withstand flood damage, and to facilitate emergency operations;

(9) Improvement of local drainage to control increased runoff that might increase the danger of flooding to other properties;

(10) Coordination of plans with neighboring community's flood plain management programs;

(11) The requirement that all new construction and substantial improvements in areas subject to subsidence be elevated above the base flood level equal to expected subsidence for at least a ten year period;

(12) For riverine areas, requiring subdividers to furnish delineations for floodways before approving a subdivision;

(13) Prohibition of any alteration or relocation of a watercourse, except as part of an overall drainage basin plan. In the event of an overall drainage basin plan, provide that the flood carrying capacity within the altered or relocated portion of the watercourse is maintained;

(14) Requirement of setbacks for new construction within Zones V1-30, VE, and V on a community's FIRM;

(15) Requirement of additional elevation above the base flood level for all new construction and substantial improvements within Zones A1-30, AE, V1-30, and VE on the community's FIRM to protect against such occurrences as wave wash and floating debris, to provide an added margin of safety against floods having a magnitude greater than the base flood, or to compensate for future urban development;

(16) Requirement of consistency between state, regional and local comprehensive plans and flood plain management programs;

(17) Requirement of pilings or columns rather than fill, for the elevation of structures within flood-prone areas, in order to maintain the storage capacity of the flood plain and to minimize the potential for negative impacts to sensitive ecological areas;

(18) Prohibition, within any floodway or coastal high hazard area, of plants or facilities in which hazardous substances are manufactured.

[41 FR 46975, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 50 FR 36025, Sept. 4, 1985]

§ 60.23 Planning considerations for mudslide (i.e., mudflow)-prone areas.

The planning process for communities identified under Part 65 of this subchapter as containing Zone M, or which indicate in their applications for flood insurance pursuant to § 59.22 of this subchapter that they have mudslide (i.e., mudflow) areas, should include—

(a) The existence and extent of the hazard;

(b) The potential effects of inappropriate hillside development, including

(1) Loss of life and personal injuries, and

(2) Public and private property losses, costs, liabilities, and exposures resulting from potential mudslide (i.e., mudflow) hazards;

(c) The means of avoiding the hazard including the (1) availability of land which is not mudslide (i.e., mudflow)-prone and the feasibility of developing such land instead of further encroaching upon mudslide (i.e., mudflow) areas, (2) possibility of public acquisition of land, easements, and development rights to assure the proper development of hillsides, and (3) advisability of preserving mudslide (i.e., mudflow) areas as open space;

(d) The means of adjusting to the hazard, including the (1) establishment by ordinance of site exploration, investigation, design, grading, construction, filing, compacting, foundation, sewerage, drainage, subdrainage, planting, inspection and maintenance standards and requirements that promote proper land use, and (2) provision for proper drainage and subdrainage on public property and the location of public utilities and service facilities, such as sewer, water, gas and electrical systems and streets in a manner designed to minimize exposure to mudslide (i.e., mudflow) hazards and prevent their aggravation;

(e) Coordination of land use, sewer, and drainage regulations and ordinances with fire prevention, flood plain, mudslide (i.e., mudflow), soil, land, and water regulation in neighboring communities;

(f) Planning subdivisions and other developments in such a manner as to avoid exposure to mudslide (i.e., mudflow) hazards and the control of public facility and utility extension to discourage inappropriate development;

(g) Public facility location and design requirements with higher site stability and access standards for schools, hospitals, nursing homes, orphanages, correctional and other residential institutions, fire and police stations, communication centers, electric power transformers and substations, water and sewer pumping stations and any other public or quasi-public institutions located in the mudslide (i.e., mudflow) area to enable them to withstand mudslide (i.e., mudflow) damage and to facilitate emergency operations; and

(h) Provision for emergencies, including:

(1) Warning, evacuation, abatement, and access procedures in the event of mudslide (i.e., mudflow),

(2) Enactment of public measures and initiation of private procedures to limit danger and damage from continued or future mudslides (i.e., mudflow),

(3) Fire prevention procedures in the event of the rupture of gas or electrical distribution systems by mudslides,

(4) Provisions to avoid contamination of water conduits or deterioration of slope stability by the rupture of such systems,

(5) Similar provisions for sewers which in the event of rupture pose both health and site stability hazards and

(6) Provisions for alternative vehicular access and escape routes when normal routes are blocked or destroyed by mudslides (i.e., mudflow);

(i) The means for assuring consistency between state, areawide, and local comprehensive plans with the plans developed for mudslide (i.e., mudflow)-prone areas;

(j) Deterring the nonessential installation of public utilities and public facilities in mudslide (i.e., mudflow)-prone areas.

§ 60.24 Planning considerations for flood-related erosion-prone areas.

The planning process for communities identified under Part 65 of this subchapter as containing Zone E or which indicate in their applications for flood insurance coverage pursuant to § 59.22 of this subchapter that they have flood-related erosion areas should include—

(a) The importance of directing future developments to areas not exposed to flood-related erosion;

(b) The possibility of reserving flood-related erosion-prone areas for open space purposes;

(c) The coordination of all planning for the flood-related erosion-prone areas with planning at the State and Regional levels, and with planning at the level of neighboring communities;

(d) Preventive action in E zones, including setbacks, shore protection works, relocating structures in the path of flood-related erosion, and community acquisition of flood-related erosion-prone properties for public purposes;

(e) Consistency of plans for flood-related erosion-prone areas with comprehensive plans at the state, regional and local levels.

§ 60.25 Designation, duties, and responsibilities of State Coordinating Agencies.

(a) States are encouraged to demonstrate a commitment to the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5 as evidenced by the designation of an agency of State government to be responsible for coordinating the Program aspects of flood plain management in the State.

(b) State participation in furthering the objectives of this part shall include maintaining capability to perform the appropriate duties and responsibilities as follows:

(1) Enact, whenever necessary, legislation enabling counties and municipalities to regulate development within flood-prone areas;

(2) Encourage and assist communities in qualifying for participation in the Program;

(3) Guide and assist county and municipal public bodies and agencies in developing, implementing, and maintaining local flood plain management regulations;

(4) Provide local governments and the general public with Program information on the coordination of local activities with Federal and State requirements for managing flood-prone areas;

(5) Assist communities in disseminating information on minimum elevation requirements for development within flood-prone areas;

(6) Assist in the delineation of riverine and coastal flood-prone areas, whenever possible, and provide all relevant technical information to the Administrator;

(7) Recommend priorities for Federal flood plain management activities in relation to the needs of county and municipal localities within the State;

(8) Provide notification to the Administrator in the event of apparent irreconcilable differences between a community's local flood plain management program and the minimum requirements of the Program;

(9) Establish minimum State flood plain management regulatory standards consistent with those established in this part and in conformance with other Federal and State environmental and water pollution standards for the prevention of pollution during periods of flooding;

(10) Assure coordination and consistency of flood plain management activities with other State, areawide, and local planning and enforcement agencies;

(11) Assist in the identification and implementation of flood hazard mitigation recommendations which are consistent with the minimum flood plain management criteria for the Program;

(12) Participate in flood plain management training opportunities and other flood hazard preparedness programs whenever practicable.

(c) Other duties and responsibilities, which may be deemed appropriate by the State and which are to be officially designated as being conducted in the capacity of the State Coordinating Agency for the Program, may be carried out with prior notification of the Administrator.

(d) For States which have demonstrated a commitment to and experience in application of the minimum flood plain management criteria set forth in §§ 60.3, 60.4, and 60.5 as evidenced by the establishment and implementation of programs which substantially encompass the activities described in paragraphs (a), (b), and (c) of this section, the Administrator shall take the foregoing into account when:

(1) Considering State recommendations prior to implementing Program activities affecting State communities;

(2) Considering State approval or certifications of local flood plain management regulations as meeting the requirements of this part.

[51 FR 30309, Aug. 25, 1986]

§ 60.26 Local coordination.

(a) Local flood plain, mudslide (i.e., mudflow) and flood-related erosion area management, forecasting, emergency preparedness, and damage abatement programs should be coordinated with relevant Federal, State, and regional programs;

(b) A community adopting flood plain management regulations pursuant to these criteria should coordinate with the appropriate State agency to promote public acceptance and use of effective flood plain, mudslide, (i.e., mudflow) and flood-related erosion regulations;

(c) A community should notify adjacent communities prior to substantial commercial developments and large subdivisions to be undertaken in areas having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards.

PART 61—INSURANCE COVERAGE AND RATES

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APPENDIX A (1)—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION—STANDARD FLOOD INSURANCE POLICY—DWELLING FORM—INSURING AGREEMENT
APPENDIX A (2)—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION—STANDARD FLOOD INSURANCE POLICY—GENERAL PROPERTY FORM

AUTHORITY: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 43 FR 2570, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 61.1 Purpose of part.

This part describes the types of properties eligible for flood insurance coverage under the Program, the limits of such coverage, and the premium rates actually to be paid by insureds. The specific communities eligible for coverage are designated by the Administrator from time to time as applications are approved under the emergency program and as ratemaking studies of communities are completed prior to the regular program. Lists of such communities are periodically published under Part 64 of this subchapter.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 39068, Aug. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 5621, Feb. 14, 1984]

§ 61.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 61.3 Types of coverage.

Insurance coverage under the Program is available for structures and their contents. Coverage for each may be purchased separately. One policy to provide insurance for more than one structure is not available under the Program, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 39068, Aug. 29, 1983; 50 FR 36025, Sept. 4, 1985; 51 FR 30309, Aug. 25, 1986]

§ 61.4 Limitations on coverage.

(a) All flood insurance made available under the Program is subject:

(1) To the Act, the Amendments thereto, and the Regulations issued under the Act;

(2) To the terms and conditions of the Standard Flood Insurance Policy, which shall be promulgated by the Administrator for substance and form, and which is subject to interpretation by the Administrator as to scope of coverage pursuant to the applicable statutes and regulations;

(3) To the specified limits of coverage set forth in the Application and Declarations page of the policy; and

(4) To the maximum limits of coverage set forth in § 61.6.

(b) Insurance under the Program is available only for loss due to flood, as defined in § 59.1 of this subchapter. The policy covers damage from a general condition of flooding in the area which results from other than natural causes, such as the breaking of a dam, but does not cover damage which results from causes on the insured's own property or within his control or from any condition which causes damage, which condition is substantially confined to the insured's premises or properties immediately adjacent thereto.

(c) The policy does not cover losses from rain, snow, sleet, hail, or water spray that do not result in a general condition of flooding. It covers losses from freezing or thawing, or from the pressure or weight of ice and water, only where they occur simultaneously with and as a part of flood damage. It covers losses from mudslide (i.e., mudflow) but does not cover damage from landslides, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, earthquakes, or similar earth movements. The policy does not cover erosion which is not flood-related, claims resulting from occurrences already in progress at the time of the inception date of the term of the policy, or losses caused by land slippage rather than mudslide (see definition of mudslide/mudflow in § 59.1 of this subchapter). Damage by seepage and sewer backup may be covered only when directly resulting from a flooding situation. Abnormal erosion caused by high water levels accompanied by violent wave action along a lake or other body of water is considered a flood (see definition of flood-related erosion in § 59.1 of this subchapter). However, there is no coverage where normal, continuous wave action, accompanied by erosion or the gradual and anticipated wearing away of the land is the proximate cause of property damage.

(d) The policy protects against loss to contents only at the location described in the application, except that contents necessarily removed from the premises for preservation from a flood are protected against loss or damage from flood at the new location, if placed in a fully enclosed building, pro rata for a period of 45 days.

(e) The policy does not cover loss to any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 39068, Aug. 29, 1983; 50 FR 36025, Sept. 4, 1985; 53 FR 16277, May 6, 1988]

§ 61.5 Special terms and conditions.

(a) No new flood insurance or renewal of flood insurance policies shall be written for properties declared by a duly constituted State or local zoning or other authority to be in violation of any flood plain, mudslide (i.e., mudflow) or flood-related erosion area management or control law, regulation, or ordinance. No new flood insurance shall be written for any building, and its contents, if the building was newly constructed or substantially improved on or after October 1, 1983, in an area designated as an undeveloped coastal barrier within the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348).

(b) In order to reduce the administrative costs of the Program, of which the Federal Government pays a major share, payment of the full policyholder premium must be made at the time of application.

(c) Because of the seasonal nature of flooding, refunds of premiums upon cancellation of coverage by the insured are permitted only if the insurer ceases to have an ownership interest in the covered property at the location described in the policy. Refunds of premiums for any other reason are subject to the conditions set forth in § 62.5 of this subchapter.

(d) Each loss sustained by the insured is subject to a deductible provision under which the insured bears a portion of the loss before payment is made under the policy. The amount of the deductible for each loss occurrence is (1) for structural (i.e., insured building) losses, $500.00; and (2) for contents (i.e., insured personal property) losses, $500.00.

Optional Deductibles, All Zones, are available as follows:

CATEGORY ONE—1 TO 4 FAMILY BUILDING AND CONTENTS COVERAGE POLICIES

Options	Building/contents
	$500/$500 $1,000/$1,000 $2,000/$1,000 $3,000/$1,000 $4,000/$2,000 $5,000/$2,000

CATEGORY TWO—1 TO 4 FAMILY BUILDING COVERAGE ONLY OR CONTENTS COVERAGE ONLY POLICIES

Options	Building	Contents[1]
	$500 1,000 2,000 3,000 4,000 5,000	$500 1,00 2,00 3,00 4,00 5,00

[1] Also applies to residential unit contents in other residential building or in multi-unit condominium building.

CATEGORY THREE—OTHER RESIDENTIAL AND NONRESIDENTIAL POLICIES

Options	Policy combining building and contents	Single coverage only policy (either building or contents)
	$500/$500 1,000/1,000 2,000/2,000 3,000/3,000 4,000/4,000 5,000/5,000	$500 1,00 2,00 3,00 4,00 5,00

NOTE: Any other combination may be submitted for rating to the NFIP.

(e) Payment for a loss under the policy does not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate flood occurrence, but all losses arising out of a continuous or protracted occurrence are deemed to have arisen out of a single occurrence.

(f) The following property and contents for residential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records; and contents used in connection with any incidental commercial occupancy or use of the building;

(2) A building, and its contents, located entirely in, on, or over water or seaward of mean high tide, if the building was newly constructed or substantially improved on or after October 1, 1982.

(3) Fences, retaining walls, seawalls, swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or over water, including boathouses or other similar structures or buildings into which boats are floated or personal property in the open;

(4) Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment servicing the building including wells, septic tanks or septic systems; those portions of walks, walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured building;

(5) Animals, birds, fish; aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels; watercraft including their furnishings and equipment; and business property;

(6) Units which are primarily containers, rather than buildings (such as gas and liquid tanks);

(7) Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques;

(8) A manufactured (i.e., mobile) home located or placed within a FEMA designated Special Flood Hazard Area that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement (i) by over-the-top or frame ties to ground anchors or (ii) in accordance with manufacturer's specifications or (iii) in compliance with the community's flood plain management requirements, unless it is a manufactured (i.e., mobile) home on a permanent foundation continuously insured by the National Flood Insurance Program at the same site at least since September 30, 1982.

(9) Enclosures, contents, machinery, building components, equipment and fixtures located at an elevation lower than the lowest elevated floor of an elevated Post-FIRM building (except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the elevated Post-FIRM building), including a manufactured home; finished basement walls, floors, ceilings and other improvements to a basement having its floor subgrade on all sides (except for drywalls and sheetrock walls and ceilings, whether finished or unfinished, all only to the extent of replacing them with unfinished (i.e., nailed to framing but not taped or otherwise finished with paint or other covering) drywall or sheetrock ceilings or walls, and except for fiberglass insulation), and contents, machinery, building equipment and fixtures in such basement areas; except that coverage is provided in basement areas and in areas below the lowest elevated floor of an elevated Post-FIRM building for sump pumps, well-water tanks, well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them, natural gas tanks and the gas in them, pumps and/or tanks used in conjunction with solar energy systems, furnaces, hot water heaters, clothes washers and dryers, food freezers and the food in them, air conditioners, heat pumps and electrical junction and circuit breaker boxes; and coverage is also provided in basement areas and in areas below the lowest elevated floor of an elevated Post-FIRM building for stairways and staircases attached to the building which are not separated from the building by elevated walkways and for elevators and relevant equipment, except for such relevant equipment located below the base flood elevation if such relevant equipment was installed on or after October 1, 1987. "Post-FIRM building" means, as used in this paragraph (f)(9), a building for which the start of con-

struction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

(10) Any building, and its contents, if the building was newly constructed or substantially improved on or after October 1, 1983, in an area designated as an undeveloped coastal barrier, within the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348).

(g) The following property and contents for non-residential structures are not insurable under the Program:

(1) Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records;

(2) Except for the insurability of "animals, birds and fish," at paragraph (f)(5) of this section, all of the kinds of uninsurable property and contents referenced at paragraphs (f) (2) through (5) and at paragraphs (f) (7) through (10).

(3) Units which are primarily containers, rather than buildings (such as gas and liquid tanks, chemical or reactor container tanks or enclosures, brick kilns, and similar units) and their contents (Silos and grain storage buildings including their contents, may be insured even though they may be of container-type construction);

(4) Any building, and its contents, if the building was newly constructed or substantially improved on or after October 1, 1983, in an area designated as an undeveloped coastal barrier within the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348).

(h) The following rules provide for voidance, reduction or reformation of coverage issued under a Standard Flood Insurance Policy by the insurer:

(1) *Voidance*: This policy shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

(i) The property listed on the application is not eligible for coverage, in which case the policy is void from its inception date;

(ii) The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss, in which case the policy is void from its inception date;

(iii) During the term of the policy, the participation in the National Flood Insurance Program of the community in which the insured property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, the insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term after voidance of the policy.

(iv) The insured or the insured's agent has (A) sworn falsely, or (B) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of the policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed, or from its inception if this policy is a renewed policy and the wrongful act occurred in connection with an application for renewal or endorsement of a policy issued to the insured in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy).

(v) The premium received by the insurer for the issuance of the policy, in the case of an application for a new policy or a policy renewal, is less than the minimum premium set forth in § 61.10, in which case the policy is void from its inception date.

(2) Reduction of coverage limits or reformation. In the event that the premium payment received by the insurer is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by the insured or the agent on the application, renewal, endorsement or other form (whether evident or not) resulting in insufficient premium being received by the insurer for the purchase of the amounts of coverage requested, then:

(i) If the insufficient premium or other rating error is discovered by the insurer prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of the policy, with the amount of premium received; *Provided*, The insured may increase any reduced coverage(s) at any time by payment of the correct premium for the additional coverage limits requested and any such correct premium received by the insurer prior to any loss under the policy shall result in coverage being provided for the loss up to the additional amount of coverage requested by the insured. The application of the insufficient premium received to the provision of flood insurance coverage shall be made as follows:

(A) In the event that only one kind of coverage (building coverage or contents coverage) has been requested, the insured shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

(B) In the event that both building coverage and contents coverage have been requested, the insurer shall determine the percentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage, and the insured shall receive, as to each kind of coverage requested, the amount of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and where the application of the above percentage ratio causes the premium received, as apportioned by the ratio, to produce an amount of premium for one of the kinds of coverages to be more than sufficient to purchase the amount of insurance of that kind of coverage requested by the insured, any such excess of apportioned premium will be applied to obtain an additional amount of the other kind of coverage, until the amount of insurance requested for the other coverage is obtained;

(C) Provided, however, under this paragraph (h)(2)(i) of this section as to any mortgagee (or trustee) named in the policy, the insurer shall give anotice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured's indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

(ii) If the insufficient premium or other rating error is discovered by the insurer at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of paragraph (h)(2)(i), of this section, unless:

(A) The insured or the insured's agent has sworn falsely or fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed, or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to the insured in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions for any voided policy year, in connection with the issuance of the policy), or

(B) Provided paragraph (h)(2)(ii)(A) of this section does not apply, the insured remits and the insurer receives that additional premium required to purchase for the current policy term and for the previous policy term, if then insured, the limits of coverage for each kind of coverage as was initially requested by the insured within thirty (30) days from the date the insurer gives the insured written notice of additional premium due, in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to the insured in the amounts of coverage initially requested. Silence or other failure to remit the additional premium required, or nonreceipt of such premium by the insurer within thirty (30) days from the date of notice of premium due, shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amount of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to the insured. *Provided*, however, under this subsection "B" as to any mortgagee (or trustee) named in the policy, the insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee); provided, further, the insurer is under no obligation to send the insured any written notice of additional premium due or notice of premium due under this subsection "B".

(i) The standard flood insurance policy is authorized only under terms and conditions established by Federal statute, the program's regulations, the Administrator's interpretations and the express terms of the policy itself. Accordingly, representations regarding the extent and scope of coverage which are not consistent with the National Flood Insurance Act of 1968, as amended, or the Program's regulations, are void, and the duly licensed property or casualty agent acts for the insured and does not act as agent for the Federal Government, the Federal Emergency Management Agency, or the servicing agent.

(j) *Duplicate policies not allowed.* Property may not be insured under more than one policy issued under the National Flood Insurance Act of 1968, as amended. When the insurer finds that duplicate policies are in effect, the insurer shall by written notice give the insured the option of choosing which policy is to remain in effect. If the insured chooses to keep in effect the policy with the earlier effective date, the insurer shall by the same written notice give the insured an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy. If the insured chooses to keep in effect the policy with the later effective date, the insurer shall by the same written notice give the insured the opportunity to add the coverage limits of the earlier policy to those of the later policy, as of the effective date of the later policy. In either case, the insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the insured's insurable interest, whichever is less. The insurer shall make a refund to the insured, according to applicable NFIP rules, of the premium for the policy not being kept in effect. For purposes of this paragraph (j), the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph (j) for increasing policy limits, the usual procedures for increasing policy limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy the insured chooses to keep in effect.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 47 FR 19140, May 4, 1982; 48 FR 39068, Aug. 29, 1983; 49 FR 33656, Aug. 23, 1984; 50 FR 36025, Sept. 4, 1985; 51 FR 30309, Aug. 25, 1986; 53 FR 16277, May 6, 1988; 53 FR 27991, July 26, 1988]

§ 61.6 Maximum amounts of coverage available.

(a) Pursuant to section 1306 of the Act, the following are the limits of

best copy available

coverage available under the emergency program and under the regular program.

	Regular Program		
	Emergency Program [1]	Second layer	Total amount available
	First layer		
SINGLE FAMILY RESIDENTIAL			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	35,000	150,000	185,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	50,000	[2] 150,000	185,000
OTHER RESIDENTIAL			
Except in Hawaii, Alaska, Guam, U.S. Virgin Islands	100,000	150,000	250,000
In Hawaii, Alaska, Guam, U.S. Virgin Islands	150,000	[3] 150,000	250,000
Small business	100,000	150,000	250,000
Churches and other properties	100,000	100,000	200,000
CONTENTS			
Residential	10,000	50,000	60,000
Small business	100,000	200,000	300,000
Churches, other properties (per unit)	100,000	100,000	200,000

[1] NOTES: Only first layer available under Emergency Program.
[2] Add to 35,000.
[3] Add to 100,000.

(b) The maximum limits of coverage required under the Act are twice the amounts available under First Layer Coverage.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 50 FR 36026, Sept. 4, 1985]

§ 61.7 Risk premium rate determinations.

(a) Pursuant to section 1307 of the Act, the Administrator is authorized to undertake studies and investigations to enable him/her to estimate the risk premium rates necessary to provide flood insurance in accordance with accepted actuarial principles, including applicable operating costs and allowances. Such rates are also referred to in this subchapter as "actuarial rates."

(b) The Administrator is also authorized to prescribe by regulation the rates which can reasonably be charged to insureds in order to encourage them to purchase the flood insurance made available under the Program. Such rates are referred to in this subchapter as "chargeable rates." For areas having special flood, mudslide (i.e., mudflow), and flood-related erosion hazards, chargeable rates are usually lower than actuarial rates.

§ 61.8 Applicability of risk premium rates.

Risk premium rates are applicable to all flood insurance made available for:

(a) Any structure, the construction or substantial improvement of which was started after December 31, 1974 or on or after the effective date of the initial FIRM, whichever is later.

(b) Coverage which exceeds the following limits:

(1) For dwelling properties in States other than Alaska, Hawaii, the Virgin Islands, and Guam (i) $35,000 aggregate liability for any property containing only one unit, (ii) $100,000 for any property containing more than one unit, and (iii) $10,000 liability per unit for any contents related to such unit.

(2) For dwelling properties in Alaska, Hawaii, the Virgin Islands, and Guam (i) $50,000 aggregate liability for any property containing only one unit, (ii) $150,000 for property containing more than one unit, and (iii) $10,000 aggregate liability per unit for any contents related to such unit.

(3) For churches and other properties (i) $100,000 for the structure and (ii) $100,000 for contents of any such unit.

(c) Any structure or the contents thereof for which the chargeable rates prescribed by this part would exceed the risk premium rates.

§ 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per $100 of flood insurance are established as follows for all areas designated by the Administrator under Part 64 of this subchapter for the offering of flood insurance.

RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rates per year per $100 coverage on	
	Structure	Contents
(1) Residential	$0.55	$0.65
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration	.65	1.30

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

[53 FR 23632, June 23, 1988]

§ 61.10 Minimum premiums.

The minimum premium required for any policy, regardless of the term or amount of coverage, is $50.00.

[46 FR 13514, Feb. 23, 1981]

§ 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.

(a) The effective date and time of any new or added or increase in the amount of flood insurance coverage shall be 12:01 a.m. of the day following the application date and the presentment of payment of premium in the following cases:

(1) During the 30-day period which follows a community's initial eligibility for flood insurance under the emergency program;

(2) During the 30-day period which follows a community's initial eligibility for flood insurance under the regular program;

(b) Where title to property is conveyed, any new or added coverage or increase in the amount of coverage with respect to the property shall be effective as of the time title to the property is transferred to the purchaser, provided the written request for the new or added coverage is received by the NFIP (P.O. Box 459, Lanham, Maryland 20706) when:

(1) The flood insurance policy is applied for and the presentment of payment of premium is made at or prior to the transfer of title; or

(2) The existing flood insurance policy on the property was assigned to the purchaser at or before the transfer of title to the property.

(c) Except as provided by paragraph (a) or (b) of this section the effective date and time of any new policy or added coverage or increase in the amount of coverage shall be 12:01 a.m. (local time) on the 5th calendar day after the application date and the presentment of payment of premium; for example, a flood insurance policy applied for with the payment of the premium on April 1 to cover property located in a community that has been participating in the program longer than 30 days will become effective at 12:01 a.m. on April 6.

(d) Adding new coverage or increasing the amount of coverage in force is permitted during the term of any policy. The additional premium for any new coverage or increase in the amount of coverage shall be calculated pro rata in accordance with the rates currently in force.

(e) With respect to any submission of an application in connection with new business, the payment by an insured to an agent or the issuance of premium payment by the agent, does not constitute payment to the NFIP, except where a WYO Company receives an application and premium payment from one of its agents and elects to refer the business to the NFIP Servicing Agent because the WYO Company does not wish to write the business, in which case any applicable waiting period under this section shall be calculated in accordance with the first sentence of paragraph (f) of this section. Therefore, it is important that an application for Flood Insurance and its premium be mailed to the NFIP (P.O. Box 459, Lanham, Maryland 20706) promptly in order to have the effective date of the coverage based on the application date plus the waiting period. If the application and the premium payment are received at the office of the NFIP within ten (10) days from the date of application, the waiting period will be calculated from the date of application. Also, as an alternative, in those cases where the application and premium payment are mailed by certified mail within four (4) days from the date of application, the waiting period will be calculated from the date of application even though the application and premium payment are received at the office of the NFIP after ten (10) days following the date of application. Thus, if the application and premium payment are received after ten (10) days from the date of the application or are not mailed by certified mail within four (4) days from the date of application, the waiting period will be calculated from the date of receipt at the office of the NFIP. To determine the effective date of any coverage added by endorsement to a flood insurance policy already in effect, substitute the term "endorsement" for the term "application" in this paragraph (e).

(f) With respect to the submission of an application in connection with new business, a renewal of a policy in effect and an endorsement to a policy in effect, the payment by an insured to an agent or the issuance of premium payment to a Write-Your-Own (WYO) Company by the agent, accompanied by a properly completed application, renewal or endorsement form, as appropriate, shall commence the calculation of any applicable waiting period under this section, provided that the agent is acting in the capacity of an agent of a Write-Your-Own (WYO) Company authorized by 44 CFR 62.23, is under written contract to or is an employee of such Company, and such WYO Company is, at the time of such submission of an application in connection with new business or a renewal of or endorsement to flood insurance coverage, engaged in WYO business under an arrangement entered into by the Administrator and the WYO Company pursuant to § 62.23.

(1) It is further provided that: (i) With respect to any submission of an application with the proper premium in connection with new flood insurance business to a WYO Company and a renewal, with the proper premium of a flood insurance policy in effect by a WYO Company, which flood insurance policy is to be issued with an effective date identical to the effective date of a Homeowners, Farmowners, or Standard Fire Insurance Policy ("companion policy") to be issued to the same named insured and insuring the same property, the flood insurance policy may be issued in accordance with the WYO Company's customary business practices, as are used in the case of the companion policy, including premium receipt practices, and may have the same effective date as the companion policy, anything to the contrary in this section notwithstanding; provided, the flood insurance policy may not be cancelled by the named insured with a return of premium during its term unless the companion policy, or policies, is also cancelled by the named insured, effective the same date of cancellation as the flood insurance policy.

(ii) Provided, further, if the premium payments in repect to a companion policy, or policies, are being made on an installment basis, the premium payments in respect to the flood insurance policy may be made by the insured on the same basis; however, should the insured default in the payment of any installment of flood insurance premium when it is due, the WYO Company shall remain liable to the Administrator for any uncollected flood insurance premium until it effects cancellation of both the companion policy, or policies, and the flood insurance policy.

(iii) Provided, further, in the event the named insured of a flood insurance policy cancels a companion policy before its expiration, but does not cancel the flood insurance policy, the WYO Company may continue the flood insurance policy in effect to the end of its term or may cancel the flood insurance policy and, effective upon its cancellation, issue a new flood insurance policy with the same expiration date as the cancelled policy, which policy, if renewed by the named insured, will be renewed for a term of, at least, one (1) year.

(2) With respect to any renewal of an NFIP policy in effect by a WYO Company, or any renewal of a flood insurance policy issued by a WYO Company, where payment of premium is not tendered to an agent under written contract to the WYO Company or to an employee of such WYO Company but, instead, is mailed by the policyholder directly to the WYO Company, the renewal premium payment shall be deemed to be received by the WYO Company prior to the expiration date of the policy if the renewal premium payment is mailed to the WYO Company prior to the expiration date and is received by the WYO Company prior to or within five (5) days following the expiration date.

(3) Subject to the provisions of this paragraph (f), the rules set forth in paragraphs (a), (b), (c), (d) and (e) of this section apply to WYO Companies, except that premium payments and accompanying applications and endorsements shall be mailed to and received by the WYO Company, rather than the NFIP.

[43 FR 50427, Oct. 30, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 46 FR 13514, Feb. 23, 1981; 48 FR 39069, Aug. 29, 1983; 48 FR 44544, Sept. 29, 1983; 49 FR 33656, Aug. 24, 1984; 50 FR 16242, Apr. 25, 1985; 50 FR 36026, Sept. 4, 1985; 51 FR 30309, Aug. 25, 1986; 53 FR 15211, April 28, 1988]

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§ 61.12 Rates based on a flood protection system involving Federal funds.

(a) Where the Administrator determines that a community has made adequate progress on the construction of a flood protection system involving Federal funds which will significantly limit the area of special flood hazards, the applicable risk premium rates for any property, located within a special flood hazard area intended to be protected directly by such system will be those risk premium rates which would be applicable when the system is complete.

(b) Adequate progress in paragraph (a) of this section means that the community has provided information to the Administrator sufficient to determine that substantial completion of the flood protection system has been effected because:

(1) 100 percent of the total financial project cost of the completed flood protection system has been authorized;

(2) At least 60 percent of the total financial project cost of the completed flood protection system has been appropriated;

(3) At least 50 percent of the total financial project cost of the completed flood protection system has been expended;

(4) All critical features of the flood protection system, as identified by the Administrator, are under construction, and each critical feature is 50 percent completed as measured by the actual expenditure of the estimated construction budget funds; and

(5) The community has not been responsible for any delay in the completion of the system.

(c) Each request by a community for a determination must be submitted in writing to the Risk Studies Division, Office of Risk Assessment, Federal Insurance Administration, Federal Emergency Management Agency, Washington DC, and contain a complete statement of all relevant facts relating to the flood protection system, including, but not limited to, supporting technical data (e.g., U.S. Army Corps of Engineers flood protection project data), cost schedules, budget appropriation data and the extent of Federal funding of the system's construction. Such facts shall include information sufficient to identify all persons affected by such flood protection system or by such request: a full and precise statement of intended purposes of the flood protection system; and a carefully detailed description of such project, including construction completion target dates. In addition, true copies of all contracts, agreements, leases, instruments, and other documents involved must be submitted with the request. Relevant facts reflected in documents, however, must be included in the statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the requirements of paragraph (b) of this section, specifying the pertinent provisions. The request must contain a statement whether, to the best of the knowledge of the person responsible for preparing the application for the community, the flood protection system is currently the subject matter of litigation before any Federal, State or local court or administrative agency, and the purpose of that litigation. The request must also contain a statement as to whether the community has previously requested a determination with respect to the same subject matter from the Administrator, detailing the disposition of such previous request. As documents become part of the file and cannot be returned, the original documents should not be submitted.

(d) The effective date for any risk premium rates established under this section shall be the date of final determination by the Administrator that adequate progress toward completion of a flood protection system has been made in a community.

(e) A responsible official of a community which received a determination that adequate progress has been made towards completion of a flood protection system shall certify to the Administrator annually on the anniversary date of receipt of such determination that no present delay in completion of the system is attributable to local sponsors of the system, and that a good faith effort is being made to complete the project.

(f) A community for which risk premium rates have been made available under section 1307(e) of the National Flood Insurance Act of 1968, as amended, shall notify the Administrator if, at any time, all progress on the completion of the flood protection system has been halted or if the project for the completion of the flood protection system has been canceled.

[43 FR 2570, Jan. 17, 1978, Redesignated at 44 FR 31177, May 31, 1979, and amended at 47 FR 43061 Sept. 30, 1982; 48 FR 39069, Aug. 29, 1983; 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 51 FR 30310, Aug. 25, 1986]

§ 61.13 Standard Flood Insurance Policy.

(a) *Incorporation of forms.* Each of the Standard Flood Insurance Policy forms included in Appendix "A" hereto ("General Property" and "Dwelling Building and Contents") and by reference incorporated herein shall be incorporated into the Standard Flood Insurance Policy.

(b) *Endorsements.* All endorsements to the Standard Flood Insurance Policy shall be final upon publication in the FEDERAL REGISTER for inclusion in Appendix A.

(c) *Applications.* The application and renewal application forms utilized by the National Flood Insurance Program shall be the only application forms used in connection with the Standard Flood Insurance Policy.

(d) *Waivers.* The Standard Flood Insurance Policy and required endorsements must be used in the Flood Insurance Program, and no provision of the said documents shall be altered, varied, or waived other than through the issuance of an appropriate amendatory endorsement, approved by the Administrator as to form and substance for uniform use.

(e) *Oral and written binders.* No oral binder or contract shall be effective. No written binder shall be effective unless issued with express authorization of the Administrator.

(f) The Standard Flood Insurance Policy and endorsements may be issued by private sector "Write-Your-Own" (WYO) property insurance companies, based upon flood insurance applications and renewal forms, all of which instruments of flood insurance may bear the name, as Insurer, of the issuing WYO Company. In the case of any Standard Flood Insurance Policy, and its related forms, issued by a WYO Company, wherever the names "Federal Emergency Management Agency" and "Federal Insurance Administration" appear, the WYO Company is authorized to substitute its own name therefor. Standard Flood Insurance Policies issued by WYO Companies may be executed by the issuing WYO Company as Insurer, in the place and stead of the Federal Insurance Administrator.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979 and amended at 44 FR 62517, Oct. 31, 1979; 48 FR 46791, Oct. 14, 1983]

§ 61.14 Standard Flood Insurance Policy Interpretations.

(a) *Definition.* A Standard Flood Insurance Policy Interpretation is a written determination by the Administrator construing the scope of the flood insurance coverage that has been and is provided under the policy.

(b) *Publication and requests for interpretation.* The Administrator shall, pursuant to these regulations from time to time, issue interpretative rulings regarding the provisions of the Standard Flood Insurance Policy. Such Interpretations shall be published in the FEDERAL REGISTER, made a part of Appendix C to these regulations, and incorporated by reference as part of these regulations. Any policyholder or person in privity with a policyholder may file a request for an interpretation in writing with the Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 39072, Aug. 29, 1983]

§ 61.15 Assumption of liabilities under all outstanding flood insurance policies issued by the National Flood Insurers Association.

On January 1, 1978, all Standard Flood Insurance Policies issued by the National Flood Insurers Association prior to January 1, 1978, which have their annual policy period extending into the calendar year 1978, shall be considered to be Standard Flood Insurance Policies issued by the Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC.

[43 FR 2570, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 47 FR 43061, Sept. 30, 1982]

§ 61.16 Probation additional premium.

The additional premium charged pursuant to § 59.24(b) on each policy sold or renewed within a community that has been placed on probation on or after October 1, 1986, is $25.00.

[50 FR 36026, Sept. 4, 1985]

APPENDIX A (1)

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof]

DWELLING FORM—INSURING AGREEMENT

Agreement of Insurance Between the Federal Emergency Management Agency (FEMA), as Insurer, (hereinafter known as "we", "our", and "us") and the Insured (hereinafter known as "you" and "your"). Based upon your having paid the correct amount of premium, our reliance on the accuracy of the information and statements you have furnished in the application for this policy about the property to be insured and subject to all the terms of this policy, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq., hereinafter called the Act), and regulations issued by us (Title 44, Code of Federal Regulations), we insure you and your legal representatives against all "Direct Physical Loss by or from Flood", as defined in Article II of this Agreement, to the insured property, to the extent of the actual cash value, not including any antique value, of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Now therefore, in consideration of the foregoing and the mutual promises exchanged herein, we and you agree, further, as follows:

Article I—Persons Insured

We insure only:

A. The named insured and legal representatives;

B. Any mortgagee and loss payee named in the application and declaration page in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named insured.

Article II—Definitions

"Actual Cash Value" means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

"Application" means the statement made and signed by you or your agent, and giving information on the basis of which we determine the acceptability of the risk, the policy to be issued and the correct premium payment, which must accompany the application for the policy to be issued. The application is a part of this flood insurance policy.

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Building" means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a manufactured (i.e., mobile) home on a permanent foundation, subject to Article V(H), and a walled and roofed building in the course of construction, alteration or repair. This policy does not cover more than one building, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator.

"Cancellation" means that ending of the insurance coverage provided by this policy prior to the expiration date.

"Coastal High Hazard Area" means an area subject to high velocity waters, including hurricane wave wash and tsunami.

"Declaration Page" is a computer generated summary of information furnished by you in the application for insurance. The declarations page is a part of this flood insurance policy.

"Direct Physical Loss by or from Flood" means any loss in the nature of actual loss of or physical damage evidenced by physical changes to the insured property (building or contents (personal property)) which is directly and proximately caused by a "flood" (as defined in this Agreement), while the insured property is located: 1. at the property address shown on the application for this insurance, which is a part of this Agreement; and 2. for forty-five days, at another place above ground level, or outside of the special flood hazard area to which any of the insured property shall necessarily be removed by you in order to protect and preserve it from flood or from the imminent danger of flood (provided, personal property so removed must be placed in a fully enclosed building or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by you including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates in moving any of your insured property temporarily away from the peril of flood and storing this property at the temporary location (not exceeding 45 days) shall be reimbursed to you for buildings in an amount up to the amount of the minimum building deductible and for contents in an amount up to the amount of the minimum contents deductible. This policy's deductible amounts, as provided for at Article VI, shall not be applied to this reimbursement, but shall be applied to any other benefits under this policy's coverage. The term "Direct Physical Loss by or from Flood" shall not include compensation for loss of access, loss of use, loss of profits, or loss resulting from interruption of business, profession or manufacture, or reimbursement for your additional living expenses, incurred by reason of your having to live in rented quarters while the insured building is being repaired or replaced, or allowance for any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair, or other economic loss.

"Dwelling" means a building designed for use as a residence for no more than four families.

"Expense Constant": The expense constant is a flat charge per policy term, paid by the Insured to defray the Federal Government's policy-writing and other expenses.

"Expiration Date" means the ending of the insurance coverage provided by this policy on the expiration date shown on the declaration page.

"Flood": Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph A-2, of this article and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in A-1 above.

"Manufactured home" means a building transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles. To be eligible for coverage under this policy, a manufactured home must be on a permanent foundation and if located in a FEMA designated Special Flood Hazard Area, must meet the requirements of paragraph H of Article V.

"Mobile home" means a manufactured home.

"Policy" means the entire written contract between you and us; it includes this printed form, the application, and declarations page, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new policy and policy term. Only one building, specifically described by you in the application, may be insured under this policy, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator.

"Post-FIRM building" means a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

"Probation additional premium" means a flat charge per policy term paid by the Insured on all new and renewal policies issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24 on or after October 1, 1986.

"Walled and Roofed" means the building has in place two or more exterior, rigid walls and the roof is fully secured so that the building will resist flotation, collapse and lateral movement.

Article III—Losses Not Covered

We only provide coverage for direct physical loss by or from flood which means we do not cover:

A. Losses from other casualties, including:

1. Loss caused by theft, loss of profits, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., -mudflows) or erosion as is covered under the peril of flood.

2. Loss caused (i) by rain, snow, sleet, hail or water spray; or (ii) by freezing, thawing, the pressure or weight of ice or water, sewer backup or seepage of water unless your insured property has been, at the same time, damaged by a flood.

3. Water, moisture or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the insured building or from any condition which is within your control (including but not limited to design, structural or mechancial defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixture or equipment).

B. Losses of the following nature:

1. A loss which is already in progress as o 12:01 A.M. of the first day of the polic term, or as to any increase in the limits o coverage which is requested by you, a lo which is already in progress when you r quest the additional coverage.

2. A loss from a flood which is confined t the premises on which your insured property is located unless the flood is displace over two acres of the premises.

3. A loss caused by your modification t the insured property or the described premises on which the insured property is located, which materially increases the risk o flooding.

4. Loss caused intentionally by you or an member of your household.

5. Loss caused by or resulting from power heating or cooling failure, unless such failure results from physcial damage to power heating or cooling equipment situated o premises where the insured property is located, caused by the peril insured against.

6. Loss to any building or contents locate on property leased from the Federal Government, arising from or incident to th flooding of the property by the Federa Government, where the lease expressl holds the Federal Government harmles under flood insurance issued under any Federal Government program, from loss arisin from or incident to the flooding of the property by the Federal Government.

Article IV—Property Covered (Subject to "Property Not Covered" Provisions)

We will pay for physical damage caused by flood to the building at the property address you have furnished, as well as the contents of the building, if you have purchased contents coverage, and provided you have paid the correct premium for the insurance, as follows:

A. We cover your dwelling, which includes:

1. A residential building, designed fo principal use as a dwelling place for no more than four families or we cover your dwelling unit in a condominium building, along with your insurable tenant in common interest i that building's common elements, and the common elements of any other building o your condominium association covered b insurance that is: (i) in the name of you condominium association, (ii) provided under the Act, and (iii) in an amount a least equal to the actual cash value of the building's common elements at the beginning of the current policy term or the maximum building coverage limit available under the Act, whichever is less; provided that the insurance under this policy shall be excess over any insurance in the name of your con

dominium association covering the same property covered by this policy; provided, your condominium dwelling unit is a residence designed for principal use as a dwelling place for no more than one family and it is so described in the Application: *Provided That*, should the amount of insurance collectible under this policy for a loss, when combined with any recovery available to you as a tenant in common under any condominium association flood insurance coverage provided under the Act for the same loss, exceed the statutorily permissible limits of building coverage available for the insuring of single-family dwellings under the Act, then the limits of building coverage under this policy shall be reduced in regard to that loss by the amount of such excess;

2. Additions and extensions attached to and in contact with the dwelling;

3. Building equipment, fixtures and outdoor equipment used in connection with the dwelling while stored inside the dwelling or another fully enclosed building at the property address;

4. Materials and supplies to be used in constructing, altering or repairing the dwelling or another building insured by us at the property address while stored inside a fully enclosed building (i) at the property address or (ii) on an adjacent property at the time of loss, or (iii) in case of another building at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the building during flooding (the flotation out of the building shall be deemed by you and us to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this policy).

5. As appurtenant structures, detached garages and carports located at the described premises, at your option at the time of loss, in an amount up to 10% of the amount of insurance you have purchased to cover the dwelling, including additions to the dwelling; to the extent you exercise this option, you reduce the amount of insurance available to cover loss relating to A(1) (2) (3) and (4) of this appendix, to the dwelling and this option may not be chosen so as to extend coverage to buildings: (i) occupied, rented or leased in whole or in part for dwelling purposes (or held for such use), or (ii) used in whole or in part for personal or commercial manufacturing or farming purposes (or held for such uses), or (iii) which are boathouses.

6. A building in the course of construction before it is walled and roofed subject to the following conditions: (i) The amount of the deductible for each loss occurrence before the building is walled and roofed is two times the deductible which is selected to apply after the building is walled and roofed; (ii) coverage is provided before the building is walled and roofed only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and (iii) there is no coverage before the building is walled and roofed where the lowest floor, including basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is below the base flood elevation in Zones AH, AE or A1-30 or is below the base flood elevation adjusted to include the effect of wave action in Zones VE or V1-30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1-30 and the top of the floor in Zones AH, AE or A1-30.

7. When the insurance under this policy covers a building, the reasonable expenses incurred by you for the purchase of (i) sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, (ii) fill for temporary levees, (iii) pumps, and (iv) wood, all for the purpose of saving the building due to the imminent danger of a flood loss, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates, are a covered loss in an aggregate amount up to the amount of the minimum building deductible. The policy's building deductible amount, as provided for at Article VI, shall not be applied to this reimbursement, but shall be applied to any other benefits under the policy's building coverage. For reimbursement under this paragaraph 7 to apply, the following conditions must be met:

(i) The insured property must be in imminent danger of sustaining flood damage; and

(ii) The threat of flood damage must be of such imminence as to lead a person of common prudence to apprehend flood damage; and

(iii) A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of flood.

B. We cover your Personal Property as contents incidental to the occupancy of the building as a dwelling under the policy, subject to "C" of this appendix, and that belonging to members of your family in your household and, at your option within the limits of contents coverage purchased for personal property loss, guests' and servants' personal property and the personal property of others for which you may be responsible—all while stored within a building at the property address. Personal property in the open and not stored in a building shall not be covered against loss by flood under this policy. However, personal property located in buildings having in place two or more rigid walls and a fully secured roof are covered if the contents are secured to prevent flotation out of the building during flooding; the flotation out of the building during flooding of any such contents shall be deemed by you and us to establish the conclusive presumption that the contents were not reasonably secured to prevent flotation. At your option at the time of loss, in an amount up to 10% of the amount of insurance you have purchased to cover personal property, this policy will also cover:

1. Loss to improvements, alterations, and additions made by you, as a Tenant, to an insured building at the property address;

2. If you are an individual condominium unit owner, loss to the interior walls, floors, and ceilings of your unit that are not otherwise covered under a condominium association policy.

C. *Limitations*: As a limitation on "B", above, we shall not reimburse you for loss in any one flood as to the following personal property to the extent the total loss of such property exceeds $250.00: paintings, etchings, pictures, tapestries, art glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, rare books), necklaces, bracelets, gems, precious or semi-precious stones, articles of gold, silver, or platinum and furs or any article containing fur which represents its principal value. In the case of personal property owned by you in a condominium building, as a dwelling unit owner, as well as in common with other dwelling unit owners, should the amount of insurance collectible under this policy for a loss, when combined with any recovery available to you as a tenant in common under any condominium association flood insurance coverage provided under the Act for the same loss, exceed the statutorily permissible limits of contents coverage available for the insuring of single-family dwelling owners under the Act, then the limits of contents coverage under this policy shall be reduced in regard to that loss by the amount of such excess.

D. *Debris removal:* Within the limits of your coverage, we cover any expense you incur, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates, as a result of removing debris of, on or from the insured property so long as the debris problem was directly caused by a flood.

E. *Demolition coverage:* Within the limits of your coverage, you may apply all or part of the proceeds of any flood insurance claim you make under this policy toward the expenses you incur in removing damaged portions of the insured building from the property location following a flood loss.

Article V—Property not Covered

We do not cover and will not pay for damage to or loss of any of the following:

A. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts or other valuable papers or records and contents used in connection with any incidental commercial occupancy or use of the building.

B. A building, and its contents, located entirely in, on, or over water or seaward of mean high tide, if the building was newly constructed or substantially improved on or after October 1, 1982.

C. Fences, retaining walls, seawalls, swimming pools, bulkheads, wharves, piers, bridges, docks; other open structures located on or over water, including boat houses or other similar structures or buildings into which boats are floated or personal property in the open.

D. Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment including wells, septic tanks or septic systems; those portions of walks, walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured building.

E. Animals, birds, fish; aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels; watercraft including their furnishings and equipment; and business property.

F. Enclosures, contents, machinery, building components, equipment and fixtures located at an elevation lower than the lowest elevated floor of an elevated Post-FIRM building (except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the elevated Post-FIRM building), including a manufactured (i.e., mobile) home; finished basement walls, floors, ceilings and other improvements to a basement having its floor subgrade on all sides, (except for drywalls and sheetrock walls and ceilings, whether finished or unfinished, all only to the extent of replacing them with unfinished (i.e., nailed to framing but not taped or otherwise finished with paint or other covering) drywall or sheetrock ceilings or walls, and except for fiberglass insulation)and contents, machinery, building equipment and fixtures in such basement areas; except that, as to this paragraph (F), coverage is provided in basement areas and in areas below the lowest elevated floor of an elevated Post-FIRM building for sump pumps, well-water tanks, well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them, natural gas tanks, and the gas in them pumps and/or tanks used in conjunction with solar energy systems, furnaces, hot water heaters, clothes washers and dryers, food freezers, and the food in them air conditioners, heat pumps and electrical junction and circuit breaker boxes; and coverage is also provided in basement areas and in areas below the lowest elevated floor of an elevated Post-FIRM building for stairways and staircases attached to the building which are not separated from the building by elevated walkways and for elevators and relevant equipment, except for such relevant equipment located below the base flood elevation if such relevant equipment was installed on or after October 1, 1987.

G. Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques;

H. A manufactured (i.e., mobile) home located or placed within a FEMA designated Special Flood Hazard Area that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement (i) by over-the-top or frame ties to ground anchors or (ii) in accordance with manufacturer's specifications or (iii) in compliance with the community's flood plain management requirements, unless it is a manufactured (i.e., mobile) home on a permanent foundation continuously insured by the National Flood Insurance Program at the same site at least since September 30, 1982.

I. Units which are primarily containers, rather than buildings (such as gas and liquid tanks).

J. A building, and its contents, newly constructed or substantially improved on or after October 1, 1983, in an area designated as an undeveloped coastal barrier within the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348).

Article VI—Deductibles

A. Each loss to your insured property is subject to a deductible provision under which your bear a portion of the loss before payment is made under the policy.

B. The loss deductible shall apply separately to each building loss and contents (personal property) loss including, as to each, any appurtenant structure loss and debris removal expense.

C. The amount of the deductible for each loss occurrence is determined as follows: We shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which you selected when you applied for this insurance or when you raised the deductible by endorsement.

Article VII—Replacement Cost Provisions

Subject to Article VI and the limits of building coverage you have purchased, these provisions shall apply only to a Single Family Dwelling which is the principal residence of the insured and which is covered under this policy. Outdoor antennas and aerials, carpeting, awnings, appliances and other outdoor equipment, all whether attached to the insured building or not, are excluded from the replacement cost coverage. For purposes of this Article VII, a single family dwelling qualifies as your principal residence provided that, at the time of the loss, you or your spouse have lived in your building for either (1) 80% of the calendar year immediately preceding the loss or (2) 80% of the period of your ownership of the insured building, if less than one calendar year immediately preceded the loss. For purposes of this Article, the replacement cost provisions do not apply to a condominium unit within a vertical building having one or more condominium units in it not contiguous to the ground. Under this Article:

A. If at the time of loss the total amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, or is the maximum amount of insurance available under the National Flood Insurance Program, the coverage of this policy applicable to such dwelling is extended to include the full cost of repair or replacement (without deduction for depreciation).

B. If at the time of loss the total amount of insurance applicable to said dwelling is less than 80% of the full replacement cost of such dwelling and less than the maximum amount of insurance available under the National Flood Insurance Program, our liability for loss under this policy shall not exceed the larger of the following amounts:

1. The actual cash value (meaning replacement cost less depreciation) of that part of the dwelling damaged or destroyed; or

2. That portion of the full cost of repair or replacement without deduction for depreciation of that part of the dwelling damaged or destroyed, which the total amount of insurance applicable to said dwelling bears to 80% of the full replacement cost of such dwelling.

If 80% of the full replacement cost of such dwelling is greater than the maximum amount of insurance available under the National Flood Insurance Program, use the maximum amount in lieu of the 80% figure in the application of this limit.

C. Our liability for loss under this policy shall not exceed the smallest of the following amounts:

1. The limit of liability of this policy applicable to the damaged or destroyed building.

2. The replacement cost of the dwelling or any part thereof identical with such dwelling on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said dwelling or any part thereof intended for the same occupancy and use.

D. When the full cost of repair or replacement is more than $1,000 or more than 5% of the whole amount of insurance applicable to said dwelling, we shall not be liable for any loss under paragraph A or paragraph B-2 of these provisions unless and until actual repair or replacement is completed.

E. In determining if the whole amount of insurance applicable to said dwelling is 80% or more of the full replacement cost of such dwelling, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest basement floor, or where there is no basement, which are below the surface of the ground inside the foundation walls, shall be disregarded.

F. You may elect to disregard this condition in making claim hereunder, but such election shall not prejudice your right to make further claim within 180 days after loss for any additional liability brought about by these provisions.

G. These Replacement Cost Provisions do not apply to any manufactured (i.e., mobile) home which when assembled is not at least 16 feet wide or does not have an area within its perimeter walls of at least 600 square feet or personal property (contents) covered under this policy, nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

H. If your dwelling sustains a total loss or if we should pay you the entire building loss proceeds under these replacement cost provisions, there is no requirement that you rebuild the building at the insured property address.

I. If the community in which your property is located has been converted from the Emergency Program to the Regular during the current policy term, then these Replacement Cost Provisions shall be applied based on the maximum amount of insurance available under the National Flood Insurance Program at the beginning of the current policy term instead of at the time of loss.

Article VIII—General Conditions and Provisions

A. *Pair and set clause:* If you lose an article which is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount which represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. *Concealment, fraud:* We will not cover you under this policy, which shall be void, nor can this policy be renewed or any new flood insurance coverage be issued to you if you have sworn falsely, or willfully concealed or misrepresented any material fact, or done any fraudulent act concerning this insurance (See "F," of this article). In addition we will not cover you under this policy, which shall be void, in the event you have willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes us to issue a policy to you based on a premium amount which is less than the premium amount which would have been payable by you were it not for the misstatement of fact (see "G," of this article).

C. *Other insurance:* We shall not be liable for a greater proportion of any loss, less the amount of deductible, from the peril of flood than the amount of insurance under this policy bears to the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not. In other words, if you obtain additional flood insurance to cover the structure insured by this policy beyond that obtained under the authority of the National Flood Insurance Act of 1968, as amended, then you must acquire the maximum amount of available flood insurance under said Act in order to avoid the imposition of proration as described in the preceding sentence.

In the event that the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property exceeds the maximum amount of insurance permitted under the provisions of the National Flood Insurance Act of 1968, or any acts amendatory thereof, it is hereby understood and agreed that the insurance under this policy shall be limited to a proportionate share of the maximum amount of insurance permitted on such property under said Act, and that a refund of any extra premium paid computed on a pro rata basis, shall be made by us upon request in writing submitted not later than 2 years after the expiration of the policy term during which such extra amount of insurance was in effect.

"Excess Insurance" as used herein shall be held to mean insurance of such part of the actual cash value of the property as is in excess of the maximum amount of insurance permitted under said Act with respect to such property.

D. *Amendments, waivers, assignment:* This Standard Flood Insurance Policy cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this policy can constitute a waiver of any of our rights. Except in the case of (1) a contents only policy and (2) a policy issued to cover a building in the course of construction, assignment of this policy, in writing, is allowed upon transfer of title.

E. *Cancellation of policy by you:*

1. You can cancel this policy at any time but a refund of premium money will only be made to you when:

a. You cancel because you have transferred ownership of the insured property to someone else. In this case, we will refund to you, once we receive your written request for cancellation (signed by you), the excess of premiums paid by you which apply to the unused portion of the policy's term, pro-rata but with retention of the expense constant.

b. You cancel because we have determined that your property is not, in fact, in a special flood hazard area; and you were required to purchase flood insurance coverage by a private lender or Federal agency pursuant to Pub. L. 93-234, section 102; and the lender or Federal agency no longer requires the retention by you of the coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations.

c. You cancel a policy having a term of three (3) years, on an anniversary date, and the reason for the cancellation is:

(i) A policy of flood insurance has been obtained or is being obtained in substitution for this policy and we have received a written concurrence in the cancellation from any mortgagee of which the NFIP has actual notice, or (ii) you have extinguished the insured mortgage debt and are no longer required by the mortgagee to maintain the coverage.

Refund of any premium, under this subparagraph "c", shall be pro rata but with retention of the expense constant.

F. *Voidance, reduction or reformation of the coverage by us:*

1. Voidance: This policy shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss for which you may receive compensation under the policy, in which case the policy is void from its inception date;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which your property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, you shall be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term after voidance of the policy;

d. In the event you or your agent have (i) sworn falsely or (ii) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy shall be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to you in a prior year and affects the rating of or premium amount received for this policy. Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided policy year) in connection with the issuance of the policy;

e. The premium you submit is less than the minimum premium set forth in 44 CFR 61.10 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception date.

2. Reduction of coverage limits or reformation. In the event that the premium payment received by us is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by you or your agent on the application, renewal, endorsement, or other form (whether evident or not) resulting in insufficient premium being received by us for the purchase of the amounts of coverage requested, then:

(i) If the insufficient premium or other rating error is discovered by us prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of the policy, for the amount of premium received; provided, you may increase any reduced coverage(s) at any time by payment of the correct premium for the additional limits of coverage requested and any such correct premium received by us prior to any loss under the policy shall result in coverage being provided for the loss up to the additional amount of coverage requested by you. The application of the insufficient premium received to the provision of flood insurance coverage shall be made as follows:

a. In the event that only one kind of coverage (building coverage or contents coverage) has been requested, you shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

b. In the event that both building coverage and contents coverage have been requested, we shall determine the percentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage, and you shall receive, as to each kind of coverage requested, the amount of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and where the application of the above percentage ratio causes the premium received, as apportioned by the ratio, to produce an amount of premium for one of the kinds of coverage to be more than sufficient to purchase the amount of insurance of that kind of coverage requested by you, any such excess of apportioned premium will be applied to obtain an additional amount of the other kind of coverage until the amount of insurance requested for the other coverage is obtained;

c. Provided, however, under this section (2.) (i) as to any mortgagee (or trustee) named in the policy, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of your indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee).

(ii) If the insufficient premium or other rating error is discovered by us at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of (i) of this article, unless:

a. You or your agent has sworn falsely or fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed or from its inception if this policy is a renewal policy and the wrongful act occurred in connection with an application for or renewal or endorsement of a policy issued to you in a prior year and affects the rating of or premium amount received for this policy.

Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided policy year) in connection with the issuance of the policy, or

b. Provided (ii) a. of this article, does not apply, you remit and we receive the additional premium required to purchase (for the current policy term and the previous policy term, if then insured) the limits of coverage for each kind of coverage as was initially requested by you within thirty (30) days from the date we give you written notice of additional premium due in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to you in the amounts of coverage initially requested. Silence or other failure to remit the additional premium required or non-receipt of such premium by us within thirty (30) days from the date of notice of premium due shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amounts of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to you. Provided, however, under this subsection "B" as to any mortgagee (or trustee) named in the policy, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of your indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee). Provided, further, we are under no obligation to send you any written notice of additional premium due or notice of premium due under this subsection.

G. *Policy renewal*: The term of this policy commences on its inception date and ends on its expiration date, as shown on the "Declaration Page" which is attached to the policy. We are under no obligation to send you any renewal notice or other notice that your policy term is coming to an end and the receipt of any such notice by you shall not be deemed to be a waiver of this provision on our part. We are under no obligation to assure that policy changes reflected in endorsements submitted by you during the policy term and accepted by us are included in any renewal notice or new policy which we send to you. "Policy changes" includes the addition by you of new coverage (e.g. contents coverage added to a building coverage policy or vice versa) or any increases in the amounts of coverage.

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the renewal premium payment is received by us at the office of the NFIP within 30 days of the expiration date of this policy, subject to Article VIII.F of this appendix. If the renewal premium payment is mailed by certified mail to the NFIP prior to the expiration date, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this policy shall terminate as of the expiration date of the last policy term for which the premium payment was timely received at the office of the NFIP, and in that event, we shall not be obligated to provide you with any cancellation, termination, policy lapse, or policy renewal notice advising you of any such cancellation, termination, policy lapse, or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the declarations form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

In connection with the renewal of this policy, you will be requested during the policy term to recertify, on a Recertification Questionnaire we will provide you, the rating information used to rate your most recent application for or renewal of insurance.

Notwithstanding your responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by us prior to the expiration of the policy being renewed, we have established a business procedure for mailing renewal notices to assist insureds in meeting their responsibility. Regarding our business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to you at the address appearing on your most recent application or other appropriate form (received by the NFIP prior to to the mailing of the renewal notice by us), does, in all respects, for purposes of the NFIP presumptively establish delivery to you for all purposes irrespective of whether you actually received the notice. However, in the event we determine that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which we determine could preclude the likelihood of it being actually and timely received by you prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that you or your agent notifies us not later than one year after the date on which the payment of the renewal was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which we determine was attributable to the above circumstances, we shall mail a second bill providing a revised due date, which shall be thirty days after the date on which the bill is mailed. If the renewal payment is received by such revised due date, the policy shall be renewed as of the date on which the prior policy would have expired. If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the policy shall remain an expired policy as of the expiration date prescribed on the policy.

H. *Alterations and repairs:* You may, at any time and at your own expense, make alterations, additions and repairs to the insured property and complete structures in the course of construction.

I. *Requirements in case of loss:* Should a flood loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

3. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the policy signed and sworn to by you and furnishing us with the following information.

a. The date and time of the loss,

b. A brief explanation of how the loss happened,

c. Your interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property,

d. The actual cash value of each damaged item of insured property after depreciation is deducted from the cost of replacement of the property (unless the policy's "REPLACEMENT COST PROVISIONS" apply, in which case the replacement cost without allowance for depreciation should be furnished) and the amount of damages sustained,

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property,

f. Details as to any other contracts of insurance covering the property, whether valid or not,

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the policy was issued,

h. Details as to who occupied any insured building at the time of loss and for what purpose, and

i. The amount you claim is due under this policy to cover the loss, including statements concerning:

(i) The limits of coverage stated in the policy,

(ii) The cost to repair or replace the damaged property (whatever costs less).

4. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it. In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount; the adjuster is not authorized to approve or disapprove claims or to tell you whether your claim will be approved by us.

5. We may, at our option, waive the requirement for the completion and filing of a Proof of Loss in certain cases, in which event you will be required to sign and, at our option, swear to an adjuster's report of the loss which includes information about your loss and the damages needed by us in order to adjust your claim;

6. Any false statements made in the course of presentment of a claim under this policy may be punishable by fine or imprisonment under the applicable Federal laws.

J. *Our options after a loss*: Options we may, in our sole discretion, exercise after a loss include the following:

1. *Evidence of loss*. If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, actual cash values, amounts of loss claims, and any written plans and specifications for repair of the damaged property which you can make reasonably available to us.

2. *Examination under oath*. We may require you to show us or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; to, at such reasonable times and places as we may designate, permit us to examine and make extracts and copies of all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to repair or replace*. We may take all or any part of the damaged property at the agreed or appraised value and, also, to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under "I", above.

4. *Adjustment options*. We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

K. *When loss payable*. Loss is payable within 60 days after you file your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between us and you expressed in writing or by the filing with us of an award as provided in paragraph "M", of this article. If we reject your proof of loss in whole or in part, you may accept such denial of your claim, or exercise your rights under this policy, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

L. *Abandonment*. You may not abandon damaged or undamaged insured property to us. However, we may permit you to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to you under the policy by the value of the salvage.

M. *Appraisal*. If at any time after a loss, we are unable to agree with you as to the actual cash value—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire shall be selected by a judge of a court of record in the State in which insured property is located. The appraisers shall then appraise the loss, stating separately replacement cost, actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us shall determine the amount of actual cash value and loss or, should this policy's replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by both of us equally.

N. *Loss clause.* If we pay you for damage to property sustained in a flood loss, you are still eligible, during the term of the policy, to collect for a subsequent loss due to another flood. Of course, all loss arising out of a single, continuous flood of long duration shall be adjusted as one flood loss.

O. *Mortgage clause.* (Applicable to building coverage only and effective only when policy is made payable to a mortgagee (or trustee) named in the application and declarations form attached to this policy or of whom the Insurer has actual notice prior to the payment of loss proceeds under this policy.)

Loss, if any, under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear under all present or future mortgages upon the property descibed in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify the Insurer of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Insurer, it shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Insurer shall have the right, on like notice, to cancel this agreement.

Whenever the Insurer shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, as its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

P. *Mortgagee obligations.* If the insured fails to render proof of loss, the named mortgagee (or trustee) upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

Q. *Conditions for filing a lawsuit.* You may not sue us to recover money under this policy unless you have complied with all the requirements of the policy. If you do sue, you must start the suit within twelve (12) months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court for district in which the insured property was located at the time of the loss.

R. *Subrogation.* Whenever we make a payment for a loss under this policy, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything which would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

S. *Continuous Lake Flooding:* Where the insured building has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this policy, to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing (i) to make no further claim under this policy, (ii) not to seek renewal of this policy, and (iii) not to apply for any flood insurance under the National Flood Insurance Act of 1968, as amended, for property at the property location of the insured building. If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph S still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

T. *Duplicate policies not allowed.* Property may not be insured under more than one policy issued under the Act. When we find that duplicate policies are in effect, we shall by written notice give you the option of choosing which policy is to remain in effect. If you choose to keep in effect the policy with the earlier effective date, we shall by the same written notice give you an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy. If you choose to keep in effect the policy with the later effective date, we shall by the same written notice give you the opportunity to add the coverage limits of the earlier policy to those of the later policy, as of the effective date of the later policy. In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or your insurable interest, whichever is less. We shall make a refund to you, according to applicable NFIP rules, of the premium for the policy not being kept in effect. For purposes of this paragraph T, the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph T for increasing policy limits, the usual procedures for increasing policy limits by midterm endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy you choose to keep in effect.

Article IX—Liberalization Clause

While this policy is in force, should we have adopted any forms, endorsements, rules or regulations by which this policy could be broadened or extended for your benefit by endorsement or substitution of policy form, then, such matters shall be considered to be incorporated in this policy without additional premium charge and shall inure to your benefit as though such endorsement of substitution of policy form had been made.

Article X—What Law Governs

This policy is governed by the flood insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

In witness whereof, we have signed this policy below and hereby enter into this Insurance Agreement.

JEFFREY S. BRAGG,
Administrator, Federal Insurance Administration.

[47 FR 19142, May 4, 1982, as amended at 48 FR 39069, Aug. 29, 1983; 48 FR 42818, Sept. 20, 1983; 49 FR 33657, Aug. 24, 1984; 50 FR 36026, Sept. 4, 1985; 51 FR 30310, Aug. 25, 1986; 53 FR 16277, May 6, 1988; 53 FR 27991, July 26, 1988]

APPENDIX A (2)

FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION

STANDARD FLOOD INSURANCE POLICY

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (hereinafter called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B]

GENERAL PROPERTY FORM

In consideration of the payment of the premium, in reliance upon the statements in the application and declarations form made a part hereof and subject to all the terms of this policy, the Insurer does insure the Insured and legal representatives, to the extent of the actual cash value, not including any antique value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all *direct loss by or from flood* as defined herein, to the property described while located or contained as described in the application and declarations form attached hereto or pro rata for 45 days at each proper place to which any of the property shall necessarily be removed for preservation from the peril of "Flocd", but not elsewhere.

Assignment of this policy, in writing, by the Insured is allowed upon transfer of title except for (i) a contents only policy and (ii) a policy issued to cover a building in the course of construction. The Insurer under this Policy is the Federal Emergency Management Agency.

Article I—Persons Insured

The following are insured under this policy:

A. The named insured and legal representatives:

B. Any mortgagee and loss payee named in the application and declaration page in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named insured.

Article II—Definitions

Definitions—As used in this Policy:

"Actual cash value" means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

"Application" means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the policy to be issued and the correct premium payment, which must accompany the application for the policy to be issued. The application is a part of this flood insurance policy.

"Base flood" means the flood having a one percent chance of being equalled or exceeded in any given year.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Building" means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a walled and roofed building in the course of construction, alteration or repair and a manufactured (i.e., mobile) home on a permanent foundation, subject to Paragraph "H" of the provision titled "Property Not Covered". This policy does not cover more than one building, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator.

"Cancellation" means that ending of the insurance coverage provided by this policy prior to the expiration date.

"Coastal high hazard area" means an area subject to high velocity waters including hurricane wave wash and tsunamis.

"Declarations page" is a computer generated summary of information furnished by the Insured in the application for insurance. The declarations page is a part of this flood insurance policy.

"Direct physical loss by or from flood" means any loss in the nature of actual loss of or physical damage, evidence by physical changes, to the insured property (building or contents (personal property)) which is directly and proximately caused by a "flood" (as defined in this Agreement), while the insured property is located: (1). At the property address shown on the application for this insurance, which is a part of this Agreement; and (2) for forty-five days, at another place above ground level or outside of the special flood hazard area to which any of the insured property shall necessarily be removed in order to protect and preserve it from a flood or from the imminent danger of flood (provided, personal property so removed must be placed in a fully enclosed building or otherwise reasonably protected from the elements to be insured against loss) in which case the reasonable expenses incurred by the Insured in moving any of the insured property temporarily away from the peril of flood and storing this property at the temporary location (not exceeding 45 days) shall be reimbursed to the Insured for buildings in an amount up to the amount of the minimum building deductible and for contents in an amount up to the amount of the minimum contents deductible. This policy's deductible amounts, as provided for herein under "DEDUCTIBLES", shall not be applied to this reimbursement, but shall be applied to any other benefits under this policy's coverage. The term "Direct Physical Loss by or from Flood" shall not include compensation for loss of use, loss of access, loss of profits or loss resulting from interruption of business, profession or manufacture, allowance for any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair, or other economic loss.

"Expense constant" is a flat charge per policy term, paid by the Insured, to defray the Federal Government's policywriting and other expense.

"Expiration date" means the ending of the insurance coverage provided by this policy on the expiration date shown on the declaration page.

"Flood": Wherever in this policy the term "flood" occurs, it shall be held to mean:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph A-2 of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in A-1 of this definition.

"Manufactured home" means a building, transportable in one or more section, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles. To be eligible for coverage under this policy, a manufactured home must be on a permanent foundation and if located in a FEMA designated Special Flood Hazard Area, must meet the requirements of paragraph H of PROPERTY NOT COVERED.

"Mobile home" means a manufactured home.

"Policy" means the entire written contract between the Insured and the Insurer, including this printed form, the application and declarations page, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new policy and policy term. Only one building, specifically described by you in the application, may be insured under this policy, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Administrator.

"Post-FIRM building" means a building for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the building is located, whichever is later.

"Probation additional premium" means a flat charge per policy term paid by the Insured on all new and renewal policies issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24 on or after October 1, 1986.

"Walled and roofed" means the building has in place two or more exterior, rigid walls and the roof is fully secured so that the building will resist flotation, collapse and lateral movement.

Article III—Perils Excluded

The Insurer shall not be liable for loss:

A. By (1) rain, snow, sleet, hail or water spray; (2) freezing, thawing or by the pressure or weight of ice or water except where the property covered has been simultaneously damaged by flood; (3) water, moisture or mudslide (i.e., mudflow) damage of any kind resulting primarily from conditions, causes or occurrences which are solely related to the described premises or are within the control of the insured (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures, or equipment) or any condition which causes flooding which is substantially confined to the described premises or properties immediately adjacent thereto or; (4) seepage backup of water, or hydrostatic pressure not related to a condition of "flood" as defined;

B. Caused directly or indirectly by (1) hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack, (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces, or (b) by military, naval or air forces, or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government power authority or forces; (2) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering combating or defending against such an occurrence;

C. By nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril insured against by this policy;

D. By theft, fire, windstorm, wind, explosion, earthquake, land sinkage, land subsidence, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of flood.

E. Caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on premises where the property covered is located caused by the peril insured against.

F. Caused intentionally by the Insured.

G. Which is already in progress as of 12:01 a.m. of the first day of the policy term.

H. From a flood which is confined to the premises on which the insured property is located unless the flood is displaced over two acres of the insured premises.

I. Caused by any modification by the Insured to the insured property or the described premises on which the insured property is located which materially increases the risk of flooding.

J. To any building or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under flood insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article IV—Property Covered (Subject to "Property Not Covered" Provisions)

A. Building. 1. When the insurance under this policy covers a building, such insurance shall include additions and extensions attached thereto; permanent fixtures, machinery and equipment forming a part of and pertaining to the service of the building; personal property of the insured as landlord used for the maintenance or service of the building including fire extinguishing apparatus, floor coverings, refrigerating and ventilating equipment, all while within the described building; also, materials and supplies while within an enclosed structure located on the described premises or adjacent thereto, intended for use in construction alteration or repair of such building or appurtenant private structures on the described premises.

2. When the insurance under this policy covers a building in the course of construction, such insurance shall apply before the building is walled and roofed subject to the following conditions: (i) The amount of the deductible for each loss occurrence before the building is walled and roofed is two times the deductible which is selected to apply after the building is walled and roofed; (ii) coverage is provided before the building is walled and roofed only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and (iii) there is no coverage before the building is walled and roofed where the lowest floor, including basement floor, of a non-elevated building or the lowest elevated floor of an elevated building is below the base flood elevation in Zones AH, AE or A1–30 or is below the base flood elevation adjusted to include the effect of wave action in Zones VE or VI–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or AI–30.

3. When the insurance under this policy covers a building, the reasonable expenses incurred by the Insured for the purchase of (i) sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them, (ii) fill for temporary levees, (iii) pumps, and (iv) wood, all for the purpose of saving the building due to the imminent danger of a flood loss, are a covered loss in an aggregate amount up to the amount of the minimum building deductible. The policy's building deductible amount, as provided for herein under "DEDUCTIBLES," shall not be applied to this reimbursement, but shall be applied to any other benefits under the policy's building coverage. For reimbursement under this paragraph 3 to apply, the following conditions must be met:

(i) The insured property must be in imminent danger of sustaining flood damage; and

(ii) The threat of flood damage must be of such imminence as to lead a person of common prudence to apprehend flood damage; and

(iii) A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of flood.

B. Contents. When the insurance under this policy covers contents, coverage shall be for either household contents or other than household contents, but not for both.

1. When the insurance under this policy covers other than household contents, such insurance shall cover merchandise and stock, materials and stock supplies of every description, furniture, fixtures, machinery and equipment of every description all owned by the insured; improvements and betterments (as hereinafter defined) to the building if the insured is not the owner of the building and when not otherwise covered; all while within the described inclosed building. Bailees' goods are specifically excluded from coverage under this policy.

2. When the insurance under this policy covers household contents, such insurance shall cover all household and personal property usual or incidental to the occupancy of the premises as a residence—except animals, birds, fish, business property, other property not covered under the provisions of this policy, and any property more specifically covered in whole or in part by the other insurance including the peril insured against in this policy; belonging to the Insured or members of the Insured's family of the same household, or for which the Insured may be liable, or, at the option of the Insured, belonging to a servant or guest of the Insured; all while within the described building.

The Insured, if not the owner of the described building, may apply up to 10% of the amount of insurance applicable to the household contents covered under this item, not as an additional amount of insurance, to cover loss to improvements and betterments (as hereinafter defined) to the described building.

The Insured, if an individual condominium unit owner in the described building, may apply up to 10% of the amount of insurance on contents covered under this policy, not as an additional amount of insurance, to cover loss to the interior walls floors and ceilings that are not otherwise covered under a condominium association policy on the described building.

The Insurer shall not be liable for loss in any one occurrence for more than $250 in the aggregate on paintings, etchings, pictures, tapestries, art glass windows and other works of art (such as but not limited to statuary, marbles, bronzes, rare books, porcelains, rare glass, and bric-a-brac), jewelry, watches, necklaces, bracelets, gems, precious and semi-precious stones, articles of gold, silver, platinum and furs and any article containing fur which represents its principal value.

3. When the insurance under this policy covers improvements and betterments, such insurance shall cover the Insured's used interest in improvements and betterments to the described building.

(a) The term "improvements and betterments" wherever used in this policy is defined as fixtures, alterations, installations, or additions comprising a part of the described building and made, or acquired, at the expense of the Insured exclusive of rent paid by the Insured, but which are not legally subject to removal by the Insured.

(b) The word "lease" wherever used in this policy shall mean the lease or rental agreement, whether written or oral, in effect as of the time of loss.

(c) In the event improvements and betterments are damaged or destroyed during the term of this policy by the peril insured against, the liability of the Insurer shall be determined as follows:

(1) If repaired or replaced at the expense of the Insured within a reasonable time after such loss, the actual cash value of the damaged or destroyed improvements and betterments.

(2) If not repaired or replaced within a reasonable time after such loss, that proportion of the original cost at time of installation of the damaged or destroyed improvements and betterments which the unexpired term of the lease at the time of loss bears to the period(s) from the date(s) such improvements and betterments were made to the expiration date of the lease.

(3) If repaired or replaced at the expense of others for the use of the Insured, there shall be no liability hereunder.

4. In the case of contents owned by the Insured in a condominium building, as a condominium unit owner, as well as in common with other condominium unit owners, should the amount of insurance collectible under this policy for a loss, when combined with any recovery available to the Insured as a tenant in common under any condominium association flood insurance coverage provided under the Act for the same loss, exceed the statutorily permissible limits of contents coverage available under the Act for the insuring of risks of the class (residential, nonresidential, or small business) of the Insured, then the limits of contents coverage under this policy shall be reduced in regard to that loss by the amount of such excess.

C. Debris Removal. This insurance covers expense incurred in the removal of debris of or on the building or contents covered hereunder, which may be occasioned by loss caused by the peril insured against in this policy.

The total liability under this policy for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

Article V—Property Not Covered

This policy shall not cover:

A. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, or other valuable papers or records.

B. A building, and its contents, located entirely in, on, or over water or seaward of mean high tide, if the building was newly constructed or substantially improved on or after October 1, 1982.

C. Fences, retaining walls, seawalls, swimming pools, bulkheads, wharves, piers, bridges, docks; other open stuctures located on or over water, including boathouses or other similar structures or buildings into which boats are floated; or personal property in the open.

D. Land values, lawn, trees, shrubs or plants, growing crops, or livestock; underground structures and equipment including wells, septic tanks or septic systems; those portions of walks, walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured building.

E. Aircraft, any self-propelled vehicle or machine and motor vehicles (other than motorized equipment pertaining to the service of the premises, operated principally on the premises of the insured, and not licensed for highway use) including their parts and equipment, trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels, watercraft including their furnishings and equipment.

F. Enclosures, contents machinery, building components, equipment and fixtures located at an elevation lower than the lowest elevated floor of an elevated Post-FIRM building (except for the required utility connections and the footing, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the elevated Post-FIRM building), including a manufactured (i.e., mobile) home; finished basement walls, floor, ceilings and other improvement to a basement having its floor subgrade on all sides (except for drywalls and sheetrock walls and ceilings, whether finished or unfinished, all only to the extent of replacing them with unfinished (i.e., nailed to framing but not taped or otherwise finished with paint or other covering) drywall or sheetrock ceilings or walls, and except for fiberglass insulation), and contents machinery, building equipment and fixtures in such basement areas; except that, as to this paragraph (F), coverage is provided in basement areas and in areas below the lowest elevated floor of an elevated Post-FIRM building for sump pumps, well-water tanks, well-water tank pumps, oil tanks and the oil in them, cisterns and the water in them, natural gas tanks and the gas in them, pumps and/or tanks used in conjunction with solar energy systems, furnaces, hot water heaters, clothes washers and dryers, food freezers and the food in them, air conditioners, heat pumps and electrical junction and circuit breaker boxes; and coverage is also provided in basement areas and in areas below the lowest elevated floor of an elevated Post-FIRM building for stairways and staircases attached to the building which are not separated from the building by elevated walkways and for elevators and relevant equipment, except for such relevant equipment located below the base flood elevation if such relevant equipment was installed on or after October 1, 1987.

G. Buildings and their contents, including machinery and equipment, which are part of the building, where more than 49 percent of the actual cash value of such buildings is below ground, unless the lowest level is at or above the base flood elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques;

H. A manufactured (i.e., mobile) home located or placed within a FEMA designated Special Flood Hazard Area that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement (i) by over-the-top or frame ties to ground anchors or (ii) in accordance with manufacturer's specifications or (iii) in compliance with the community's flood plain management requirements, unless it is a manufactured (i.e., mobile) home on a permanent foundation continuously insured by the National Flood Insurance Program at the same site at least since September 30, 1982.

I. Units which are primarily containers, rather than buildings (such as gas and liquid tanks, chemical or reactor container tanks or enclosures, brick kilns, and similar units) and their contents (Silos and grain storage buildings including their contents, may be insured even though they may be of container-type construction).

J. A building, and its contents, newly constructed or substantially improved on or after October 1, 1983, in an area designated as an undeveloped coastal barrier within the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348).

Article VI—Deductibles

A. With respect to loss to the building and debris removal covered hereunder, Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $500.00.

B. With respect to loss to contents, and debris removal expenses covered hereunder, the Insurer shall be liable for only that portion of the loss in any one occurrence which is in excess of $500.00.

C. In lieu of the $500.00 deductible, the amount of the deductible in "A" and "B," above, shall be the higher amount selected, as an option, by the Insured when applying for this insurance or when raising the deductible by endorsement.

Article VII—General Conditions and Provisions

A. Pair and Set Clause. If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. Concealment, fraud. This entire policy shall be void and no renewal nor new flood insurance coverage can be issued to the Insured if, whether before or after the loss, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the Insured therein, or in case of any fraud or false swearing by the Insured relating thereto (see "E," of this appendix). In addition, this entire policy shall be void if the Insured has willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a policy to the Insured based on a premium amount which is less than the premium amount which would have been payable by the Insured if it were not for the misrepresentation of fact (see "J," of this appendix).

C. Other insurance. The Insurer shall not be liable for a greater proportion of any loss, less the amount of deductible, from the peril of flood than the amount of insurance under this policy bears to the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property, or which would have covered the property except for the existence of this insurance, whether collectible or not. In other words, if the Insured obtains additional flood insurance to cover the structure insured by this policy beyond that obtained under the authority of the National Flood Insurance Act of 1968, as amended, then the Insured must acquire the maximum amount of available flood insurance under said Act in order to avoid the imposition of proration as described in the preceding sentence.

In the event that the whole amount of flood insurance (excluding therefrom any amount of "excess insurance" as hereinafter defined) covering the property exceeds the maximum amount of insurance permitted under the provisions of the National Flood Insurance Act of 1968, or any acts amendatory thereof, it is hereby understood and agreed that the insurance under this policy shall be limited to a proportionate share of the maximum amount of insurance permitted on such property under said Act, and that a refund of any extra premium paid, computed on a pro rata basis, shall be made by the insurer upon request in writing submitted not later than 2 years after the expiration of the policy term during which such extra amount of insurance was in effect.

"Excess Insurance" as used herein shall be held to mean insurance of such part of the actual cash value of the property as is in excess of the maximum amount of insurance permitted under said Act with respect to such property.

D. Added and Waiver Provision. The extent of the application of insurance under this policy and of the contribution to be made by the Insurer in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of the Insurer relating to appraisal or to any examination provided for herein.

E. Voidance, Reduction or Reformation of the Coverage:

1. *Voidance:* This policy will be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the application is not eligible for coverage, in which case the policy is void from its inception;

b. The community in which the property is located was not participating in the National Flood Insurance Program on the policy's inception date and did not qualify as a participating community during the policy's term and before the occurrence of any loss for which the insured may receive compensation under the policy, in which case the policy is void from its inception;

c. If, during the term of the policy, the participation in the National Flood Insurance Program of the community in which the insured's property is located ceases, in which case the policy shall be deemed void effective at the end of the last day of the policy year in which such cessation occurred and shall not be renewed; in the event the voided policy included three policy years in a contract term of three years, the insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the policy's term after voidance of the policy;

d. The insured or the insured's agent has (i) sworn falsely or (ii) fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the policy, in which case this entire policy shall be void as of the date the wrongful act was committed and coverage prior to the date of the wrongful act shall not be affected, provided refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions through prior policy years, if any) in connection with the issuance of the policy;

e. The premium submitted is less than the minimum premium set forth in 44 CFR 61.10 in connection with any application for a new policy or policy renewal, in which case the policy is void from its inception.

(2) Reduction of coverage limits or reformation. In the event that the premium payment received by the insurer is not sufficient to purchase the amounts of building coverage and contents (personal property) coverage requested or in the event a rating error has been innocently made by the insured or the agent on the application, renewal, endorsement or other form (whether evident or not) resulting in insufficient premium being received by the insurer for the purchase of the amounts of coverage requested, then:

(i) If the insufficient premium or other rating error is discovered by the insurer prior to a loss under the policy, the policy shall be deemed to provide only such coverage as can be purchased, for the entire term of the policy, with the amount of premium received; *Provided,* the insured may increase any reduced coverage(s) at any time by payment of the correct premium for the additional limits of coverage requested and any such correct premium received by the insurer prior to any loss under the policy shall result in coverage being provided for the loss up to the additional amount of coverage requested by the insured; the application of the insufficient premium received to the provision of flood insurance coverage shall be made as follows:

A. In the event that only one kind of coverage (building coverage or contents coverage) has been requested, the insured shall receive the limits of that kind of coverage which can be purchased for the amount of premium received, less the expense constant;

B. In the event that both building coverage and contents coverage have been requested, the insurer shall determine the percentage ratio that each kind of insurance bears to the total amount of coverage requested, apportion the total premium received by the percentage ratio for each kind of coverage, and the insured shall receive, as to each kind of coverage requested, the amount of coverage which can be purchased by the premium amount as apportioned for each kind of coverage; where both building and contents coverage are requested and a coverage's proportion of the premium paid is more than sufficient to obtain the amount of insurance requested for that coverage, any excess of that proportion of the total premium will be applied to obtain an additional amount of the other kind of coverage until the amount of insurance requested for the other coverage is obtained;

(ii) If the insufficient premium or other rating error is discovered by the insurer at the time of a loss under the policy, the policy shall be deemed to provide coverage pursuant to the provisions of (i), of this appendix, unless:

A. The insured or the insured's agent has sworn falsely or fraudulently or willfully concealed or misrepresented any material fact (including facts relevant to the rating of this policy) in the application for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under this policy, in which case this entire policy shall be void as of the date the wrongful act was committed and coverage prior to the date of the wrongful act shall not be affected, provided, refunds of premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions through prior policy years, if any) in connection with the issuance of the policy, or

B. Provided (ii)A., of this appendix, does not apply, the insured remits and the insurer receives the additional premium required to purchase (for the current policy term and the previous policy term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the insured within thirty (30) days from the date the insurer gives the insured written notice of additional premium due, in which case the policy shall be reformed, from its inception date, to provide flood insurance coverage to the insured in the amount(s) of coverage initially requested. Silence or other failure to remit the additional premium required or non-receipt of such premium by the insurer within thirty (30) days from the date of notice of premium due, shall be deemed to be refusal to pay the additional premium due and any subsequent payment of the additional premium due shall not reform the policy from its inception date but shall only add the additional amounts of coverage to the policy for the remainder of its term, pursuant to 44 CFR 61.11, with any excess of premium paid being returned to the insured. *Provided, however,* under this section "B" as to any mortgagee (or trustee) named in the policy, the insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee (or trustee), up to the amount of the insured indebtedness, for thirty (30) days after written notice to the mortgagee (or trustee); Provided, further, the Insurer is under no obligation to send the Insured any written notice of additional premium due or notice of premium due under this subsection."

F. Conditions suspending or restricting insurance. Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured, provided, however, this insurance shall not be prejudiced by any act or neglect of any person (other than the insured), when such act or neglect is not within the control of the Insured.

G. Alterations and repairs. The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in course of construction.

H. Property of others (servants and guests only). Unless otherwise provided in writing added hereto, loss to any property of others covered under this policy shall be adjusted with the Insured for the account of the owners of said property, except that the right to adjust such loss with said owners is reserved to the Insurer. Any such insurance under this policy shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

I. Liberalization clause. If during the period that insurance is in force under this policy, or within 45 days prior to the inception date thereof, on behalf of the Insurer there be adopted under the National Flood Insurance Act of 1968, or any acts amendatory thereof, any forms, endorsements, rules or regulations by which this policy could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then such extended or broadened insurance shall inure to the benefit of the Insured hereunder as though such endorsement or substitution of form had been made.

J. Policy renewal. The term of this policy commences on its inception date and ends on its expiration date, as shown on the "Declarations Page" which is attached to the policy. The Insurer is under no obligation to send any renewal notice or other notice that the policy term is coming to an end and the receipt of any such notice by the Insured, Mortgagee or Agent of the Insured shall not be deemed to be a waiver of this provision on the Insurer's part. The Insurer is under no obligation to assure that policy changes reflected in endorsements submitted by the Insured or Agent during the policy term and accepted by the Insurer are included in any renewal notice or new policy which is sent. "Policy changes" includes the addition of new coverage (e.g. contents coverage added to a building coverage policy or vice versa) or any increases in the amounts of coverage.

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the renewal premium payment is received by the National Flood Insurance Program (NFIP) at its office within 30 days of the expiration date of this policy, subject to Article VII.E of this appendix. If the renewal premium payment is mailed by certified mail to the NFIP prior to the expiration date, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received so long as the renewal premium payment is received within the required 30 days.

In all other cases, this policy shall terminate as of the expiration date of the last policy term for which the premium payment was timely received at the office of the NFIP, and in that event, the Insurer shall not be obligated to provide the Insured with any cancellation, termination, policy lapse, or policy renewal notice advising the Insured of any such cancellation, termination, policy lapse, or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the Declaration form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

In connection with the renewal of this policy, the Insured will be requested during the policy term to recertify, on a Recertification Questionnaire provided by the Insurer, the rating information used to rate the most recent application for or renewal of insurance.

Notwithstanding the above mentioned responsibility of the Insured to submit the appropriate renewal premium in sufficient time to permit its receipt by the NFIP prior to the expiration of the policy being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the Insurer's business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on the Insured's most recent application or other appropriate form (received by the NFIP prior to the mailing of the renewal notice by the Insurer), does, in all respects, for purposes of the NFIP presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice. However, in the event that the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which the Insurer determines could preclude the likelihood of it being actually and timely received by the Insured prior to the due date for the renewal premium the following procedures shall be followed:

In the event that the Insured or his agent notifies the Insurer, not later than one year after the date on which the payment of the renewal was due, of a non-receipt of a renewal notice prior to the due date for the renewal premium, which the Insurer determines was attributable to the above circumstances, the Insurer shall mail a second bill providing a revised due date, which shall be thirty days after the date on which the bill is mailed. If the renewal payment is received by such revised due date, the policy shall be renewed as of the date on which the prior policy would have expired. If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the policy shall remain an expired policy as of the expiration date prescribed on the policy.

K. *Cancellation of policy by insured.* 1. The Insured can cancel this policy at any time but a refund of premium will be made only when:

a. The Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer receives the Insured's written request for cancellation (signed by the Insured) the excess of premiums paid by the Insured which apply to the unused portion of the policy's term, pro rata but with retention of the expense constant.

b. The Insured cancels because it has been determined that the insured property is not, in fact, in a special flood hazard area; and the Insured was required to purchase flood insurance coverage by a private lender or Federal agency pursuant to Pub. L. 93-234, section 102; and the lender or Federal agency no longer requires the retention by the Insured of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded to the Insured in full, according to applicable regulations.

c. The Insured cancels a policy having a term of three (3) years, on an anniversary date, and the reason for the cancellation is: (i) A policy of flood insurance has been obtained or is being obtained in substitution for this policy and the Insurer has received a written concurrence in the cancellation from any mortgagee of which the Insurer has actual notice, or (ii) the Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage.

Refund of any premium under this subparagraph "c" shall be pro rata but with retention of the expense constant.

L. Loss clause. Payment of any loss under this policy shall not reduce the amount of insurance applicable to any other loss during the policy term which arises out of a separate occurrence of the peril insured against hereunder provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

M. Mortgage clause (applicable to building coverage only and effective only when policy is made payable to a mortgagee (or trustee) named in the application and declarations form attached to this policy or of whom the Insurer has actual notice prior to the payment of loss proceeds under this policy): Loss, if any, under this policy, shall be payable to the aforesaid as mortgagee (or trustee) as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee (or trustee), in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are premitted by this policy; *Provided,* That in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided, also, that the mortgagee (or trustee) shall notify the Insurer of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

If this policy is cancelled by the Insurer, it shall continue in force for the benefit only of the mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of such cancellation and shall then cease, and the Insurer shall have the right, on like notice, to cancel this agreement.

Whenever the Insurer shall pay the mortgagee (or trustee) any sum for loss under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of said mortgagee's (or trustee's) claim.

N. Morgagee obligations. If the Insured fails to render proof of loss, the named mortgagee (or trustee), upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this policy relating to appraisal and time of payment and of bringing suit.

O. Loss payable clause (applicable to contents items only). Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

P. Requirements in case of loss. The Insured shall give written notice, as soon as practicable, to the Insurer of any loss, forthwith separate the damaged and undamaged property and put it in the best possible order. Within 60 days after the loss, unless such time is extended in writing by the Insurer, the Insured shall render to the Insurer, a proof of loss, signed and sworn to by the Insured stating the knowledge and belief of the Insured as to the following: the time and origin of the loss, the interest of the Insured and of all others in the property, actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss. The Insured, at the option of the Insurer, may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, actual cash value and amount of loss claimed, and verified plans and specifications of any building, fixtures or machinery destroyed or damaged.

The Insured, as often as may be reasonably required, shall exhibit to any person designated by the Insurer all that remains of any property herein described, and submit to examinations under oath by any person named by the Insurer, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by the Insurer or its representative, and shall permit extracts and copies thereof to be made.

The Insurer may, at its option, waive the requirement for the completion and filing of a Proof of Loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss which includes information about the loss and the damages needed by the Insurer before the loss can be adjusted.

Any false statements made in the course of presentment of a claim under this policy may be punishable by fine or imprisonment under the applicable Federal laws.

Q. Appraisal. In case the Insured and the Insurer shall fail to agree as to the actual cash value of the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon such umpire, then, on request of the Insured or the Insurer, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with the Insurer shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

R. Options. It shall be optional with the Insurer to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within 30 days after the receipt of the proof of loss herein required.

S. Abandonment. There shall be no abandonment to the Insurer of any property.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the policy by the value of the salvage.

T. When loss payable. Loss is payable within 60 days after the Insured files the proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insurer and the Insured, expressed in writing, or by the filing with the Insurer of an award as provided in paragraph "Q", above. If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of the claim, or exercise the Insured's rights under this policy, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

U. Action Against the Insurer. No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer may be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

V. Subrogation. In the event of any payment under this policy, the Insurer shall be subrogated to all the Insured's right of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such right; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all right of recovery against any party for loss occurring to the described property.

W. Continuous Lake Flooding: Where the insured building has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this policy, to the insured building equal to or greater than the building policy limits plus the deductible or the maximum payable under the policy for any one building loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing (i) to make no further claim under this policy, (ii) not to seek renewal of this policy, and (iii) not to apply for any flood insurance under the National Flood Insurance Act of 1968, as amended, for property at the property location of the insured building. If the policy term ends before the insured building has been flooded continuously for 90 days, the provisions of this paragraph W still apply so long as the first building damage reimbursable under this policy from the continuous flooding occurred before the end of the policy term.

X. *Duplicate policies not allowed.* Property may not be insured under more than one policy issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer shall by written notice give the Insured the option of choosing which policy is to remain in effect. If the Insured chooses to keep in effect the policy with the earlier effective date, the Insurer shall by the same written notice give the Insured an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy. If the Insured chooses to keep in effect the policy with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier policy to those of the later policy, as of the effective date of the later policy. In either case, the Insured must pay the pro-rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less. The Insurer shall make a refund to the Insured, according to applicable NFIP rules, of the premium for the policy not being kept in effect. For purposes of this paragraph X, the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph X for increasing policy limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the policy the Insured chooses to keep in effect.

IN WITNESS WHEREOF, the Insurer has executed and attested these presents.

Jeffrey S. Bragg,
Administrator, Federal Insurance
Administration.

Endorsement 1

CONDOMINIUM ASSOCIATION ENDORSEMENT

If the named Insured on this policy is a condominium association, then at the time of loss by flood the following terms, subject to all other provisions of the policy, will apply:

1. The building coverage of this policy, subject to the stated limits will cover damage to all building items covered under the policy and owned in common by the condominium association members.

2. The building coverage of this policy, subject to the stated limits, is extended to cover damage to all structural items within the Individual Condominium Units, including walls, floors, ceilings, and their related coverings, such as paint, paper, panelling, carpeting, and tile. Also covered are installed appliances for heating, cooling, plumbing and electrical purposes. The structural items may be original installations or replacement or additional items.

3. The building coverage outlined in paragraph 2 above has application only to the extent that the policy's stated limits have not been exhausted under paragraph 1.

4. The policy deductible relating to the building coverage shall be applied against the total damage to all of the building's structural elements and not against the covered loss, and shall not be applied separately in the case of each unit sustaining damage.

5. The contents coverage of this policy covers damage, subject to the stated limits, to all contents items owned in common by the association members and contained in the insured building or removed therefrom in accordance with the policy's terms.

6. The policy deductible relating to contents coverage shall be applied against the total damage to all contents owned in common by the condominium association members and contained in the insured building or removed therefrom in accordance with the policy's terms and not against the covered loss.

7. Loss under this endorsement shall be adjusted with the condominium association and shall be payable to the insurance trustee of record, as designated by the association.

8. The Insurer shall not be liable for any loss or any portion of any loss for which payment is made under any insurance in the name of any condominium unit owner, i.e., any member of the condominium association.

[43 FR 2570, Jan. 17, 1978, as amended at 44 FR 32215, June 5, 1979. Redesignated at 44 FR 31177, May 31, 1979 and amended at 47 FR 19147, May 4, 1982; 48 FR 39069, Aug. 29, 1983; 48 FR 42818, Sept. 20, 1983; 49 FR

33658, Aug. 24, 1984; 50 FR 36027, Sept. 4, 1985; 50 FR 43706, Oct. 29, 1985; 51 FR 30311, Aug. 25, 1986; 53 FR 16278, May 6, 1988; 53 FR 27991, July 26, 1988]

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Subpart A—Issuance of Policies

Sec.
62.1 Purpose of part.
62.2 Definitions.
62.3 Servicing agent.
62.4 Limitations on sale of policies.
62.5 Premium refund.
62.6 Minimum commissions.

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62.21 Claims adjustment.
62.22 Judicial review.

Subpart C—Write-Your-Own (WYO) Companies

62.63 WYO Companies authorized.
APPENDIX A TO PART 62—FEDERAL EMERGENCY MANAGEMENT AGENCY—FEDERAL INSURANCE ADMINISTRATION
APPENDIX B TO PART 62—NATIONAL FLOOD INSURANCE PROGRAM

AUTHORITY: 42 U.S.C. 4001; *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 43 FR 2573, Jan. 17, 1978, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—Issuance of Policies

§ 62.1 Purpose of part.

The purpose of this part is to set forth the manner in which flood insurance under the Program is made available to the general public in those communities designated as eligible for the sale of insurance under Part 64 of this subchapter, and to prescribe the general method by which the Administrator exercises his/her responsibility regarding the manner in which claims for losses are paid.

§ 62.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 62.3 Servicing agent.

(a) Pursuant to sections 1345 and 1346 of the Act, the Administrator has entered into the Agreement with a servicing agent to authorize it to assist in issuing flood insurance policies under the Program in communities designated by the Administrator and to accept responsibility for delivery of policies and payment of claims for losses as prescribed by and at the discretion of the Administrator.

(b) The following company has been contracted to act as a servicing agent for the Federal Insurance Administration: Computer Sciences Corporation, 9901-A George Palmer Highway, Lanham, Maryland 20706.

(c) The servicing agent will arrange for the issuance of flood insurance to any person qualifying for such coverage under Parts 61 and 64 of this subchapter who submits an application to the servicing agent in accordance with the terms and conditions of the contract between the Agency and the servicing agent.

(d) Applications and premiums should be mailed to: National Flood Insurance Program, P.O. Box 459, Lanham, Maryland 20706.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4791, Feb. 8, 1984]

§ 62.4 Limitations on sale of policies.

(a) The servicing agent shall be deemed to have agreed, as a condition of its contract that it shall not offer flood insurance under any authority or auspices in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, in any area the Administrator designates in Part 64 of this subchapter as eligible for the sale of flood insurance under the Program, other than in accordance with this part, and the Standard Flood Insurance Policy.

(b) The agreement and all activities thereunder are subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, and to the applicable Federal regulations and requirements issued from time to time pursuant thereto. No person shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the Program, on the ground of race, color, sex, creed or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this part should be referred to the Administrator.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 62.5 Premium refund.

A Standard Flood Insurance Policyholder whose property has been determined not to be in a special hazard area after the map revision or a Letter of Map Amendment under Part 70 of this subchapter may cancel the policy within the current policy year provided (a) he was required to purchase or to maintain flood insurance coverage, or both, as a condition for financial assistance, and (b) his property was located in an identified special hazard area as represented on an effective FHBM or FIRM when the financial assistance was provided. If no claim under the policy has been paid or is pending, the full premium shall be refunded for the current policy year, and for an additional policy year where the insured had been required to renew the policy during the period when a revised map was being reprinted. A Standard Flood Insurance Policyholder may cancel a policy having a term of three (3) years, on an anniversary date, where the reason for the cancellation is that a policy of flood insurance has been obtained or is being obtained in substitution for the NFIP policy and the NFIP obtains a written concurrence in the cancellation from any mortgage of which the NFIP has actual notice; or the policyholder has extinguishing the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. In such event, the premium refund shall be pro rata but with retention of the expense constant.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, as amended at 49 FR 33656, Aug. 24, 1984; 53 FR 16279, May 6, 1988]

§ 62.6 Minimum commissions.

(a) The earned commission which shall be paid to any property or casualty insurance agent or broker duly licensed by a state insurance regulatory authority, with respect to each policy or renewal the agent duly procures on behalf of the insured, in connection with policies of flood insurance placed with the NFIP at the offices of its servicing agent, but not with respect to policies of flood insurance issued pursuant to Subpart C of this part, shall not be less than $10 and is computed as follows:

(1) In the case of a new or renewal policy, the following commissions shall apply based on the total premiums paid for the policy term:

Premium amount	Commissions (percent)
First $2,000 of Premium:	
Direct bill renewals	14
Renewal applications	14
New business applications	17
Excess of $2,000:	
All Business	5

(2) In the case of mid-term increases in amounts of insurance added by endorsements, the following commissions shall apply based on the total premiums paid for the increased amounts of insurance:

Premium amounts	Commissions (percent)
First $2,000 of Premium:	
Endorsement of first-year policy	17
Endorsement of renewal policy	14
Excess of $2,000:	
All business	5

(b) Any refunds of premiums authorized under this subchapter shall not affect a previously earned commission; and no agent shall be required to return that earned commission, unless the refund is made to establish a common policy term anniversary date with other insurance providing coverage against loss by other perils in which case a return of commission will be required by the agent on a pro rata basis. In such cases, the policy shall be immediately rewritten for a new term with the same amount(s) of coverage and with premium calculated at the then current rate and, as to return premium, returned, pro rata, to the insured based on the former policy's premium rate.

[46 FR 13515, Feb. 23, 1981; as amended at 53 FR 15221, April 28, 1988]

Subpart B—Claims Adjustment and Judicial Review

§ 62.21 Claims adjustment.

(a) In accordance with the Agreement, the servicing agent shall arrange for the prompt adjustment and settlement and payment of all claims arising from policies of insurance issued under the program. Investigation of such claims may be made through the facilities of its subcontractors or insurance adjustment organizations, to the extent required and appropriate for the expeditious processing of such claims.

(b) All adjustment of losses and settlements of claims shall be made in accordance with the terms and conditions of the policy and Parts 61 and 62 of this subchapter.

§ 62.22 Judicial review.

(a) Upon the disallowance by the Federal Insurance Administration or the servicing agent of any claim on grounds other than failure to file a proof of loss, or upon the refusal of the claimant to accept the amount allowed upon any such claim, after appraisal pursuant to policy provisions, the claimant within one year after the date of mailing by the Federal Insurance Administration or the servicing agent of the notice of disallowance or partial disallowance of the claim may, pursuant to 42 U.S.C. 4072, institute an action on such claim against the Federal Insurance Administrator in the U.S. District Court for the district in which the insured property or the major portion thereof shall have been situated, without regard to the amount in controversy.

(b) Service of process for all judicial proceedings where a claimant is suing Director pursuant to 42 U.S.C. 4071 shall be made upon the appropriate United States Attorney, the Attorney General of the United States, and the Federal Insurance Administrator of the Federal Emergency Management Agency.

[43 FR 2573, Jan. 17, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 47 FR 43061 Sept. 30, 1982; 49 FR 33879, Aug. 27, 1984]

Subpart C—Write-Your-Own (WYO) Companies

§ 62.23 WYO Companies authorized.

(a) Pursuant to section 1310 of the Act, the Administrator may enter into arrangements with individual private sector property insurance companies whereby such companies may offer flood insurance coverage under the Program to eligible applicants for such insurance, including policyholders insured by them under their own property insurance business lines of insurance pursuant to their customary business practices including their usual arrangements with agents and producers, in any State in which such WYO Companies are licensed to engage in the business of property insurance. Arrangements entered into by WYO Companies under this subpart shall be in the form and substance of the standard arrangement, entitled "Financial Assistance/Subsidy Arrangement", a copy of which is included in Appendix A of this part and made a part of these regulations.

(b) Any duly licensed insurer so engaged in the Program shall be a WYO Company.

(c) A WYO Company is authorized to arrange for the issuance of flood insurance in any amount within the maximum limits of coverage specified in § 61.6 of this subchapter, as Insurer, to any person qualifying for such coverage under Parts 61 and 64 of this subchapter who submits an application to the WYO Company; coverage shall be issued under the Standard Flood Insurance Policy.

(d) A WYO Company issuing flood insurance coverage shall arrange for the adjustment, settlement, payment and defense of all claims arising from policies of flood insurance it issues under the Program, based upon the terms and conditions of the Standard Flood Insurance Policy.

(e) In carrying out its functions under this subpart, a WYO Company shall utilize its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act and regulations prescribed by the Administrator pursuant to the Act.

(f) To facilitate the marketing of flood insurance coverage under the Program to policyholders of WYO Companies, the Administrator will enter into arrangements with such companies whereby the Federal Government will be a guarantor in which the primary relationship between the WYO Company and the Federal Government will be one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended. In furtherance of this end, the Administrator has established "A Plan to Maintain Financial Control for Business Written Under the Write-Your-Own Program", a copy of which is included in Appendix B of this part and made a part of these regulations.

(g) WYO Companies shall not be agents of the Federal Government and are solely responsible for their obligations to their insureds under any flood insurance policies issued pursuant to arrangements entered into with the Administrator.

(h) To facilitate the underwriting of flood insurance coverage by WYO Companies, the following procedures will be utilized by WYO Companies:

(1) To expedite business growth, the WYO Company will encourage its present property insurance policyholders to purchase flood insurance and to transfer to the WYO Company, at the time of policy renewal, business placed by its producers with the NFIP Servicing Agent.

(2) To conform its underwriting practices to the underwriting rules and rates in effect as to the NFIP, the WYO Company will establish procedures to carry out the NFIP rating system and to provide its policyholders with the same coverage as is afforded under the NFIP.

(3) The WYO Company may follow its customary billing practices to meet the Federal rules on the presentment of premium and net premium deposits to a Letter of Credit bank account authorized by the Administrator and reduction of coverage when an underpayment is discovered.

(4) The WYO Company is expected to meet the recording and reporting requirements of the WYO Statistical Plan. Transactions reported by the WYO Company under the WYO Statistical Plan will be analyzed by the NFIP Servicing Agent. A monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of WYO Company submissions, the disposition of transactions which have not passed systems edits and the reconciliation of the totals generated from transaction reports with those submitted on the WYO Company's reconciliation reports.

(5) If a WYO Company rejects an application from an agent or a producer, the agent or producer should be notified so that the business can be placed through the NFIP Servicing Agent, or another WYO Company.

(6) Flood insurance coverage will be issued by the WYO Company on a separate policy form and will not be added, by endorsement, to the Company's other property insurance forms.

(7) Premium payment plans can be offered by the WYO Company so long as the net premium depository requirements specified under the NFIP/WYO Program accounting procedures are met. A cancellation by the WYO Company for non-payment of premium will not produce a pro-rata return of the net premium deposit to the WYO Company.

(8) NFIP business will not be assumed by the WYO Companies at any time other than at renewal time, at which time the insurance producer may submit the business to the WYO Company as new business. However, it is permissible to cancel and rewrite flood policies to obtain concurrency of expiration dates with other policies covering the property. Where the insurance agent or producer of record of a flood insurance policy issued by the Administrator has authorized the

NFIP, in writing, to release policy information for the conversion of the NFIP coverage to a designated WYO Company represented by the agent or producer of record, in order to facilitate policy issuance and reduce administrative burdens upon the NFIP and WYO Companies and their agents and producers, countersignature requirements in the several States shall not apply.

(i) To facilitate the adjustment of flood insurance claims by WYO Companies, the following procedures will be utilized by WYO Companies.

(1) Under the terms of the Arrangement set forth at Appendix A of this part, WYO Companies will adjust claims in accordance with general Company standards, guided by NFIP Claims manuals. The Arrangement also provides that claim adjustments shall be binding upon the FIA. For example, the entire responsibility for providing a proper adjustment for both combined wind and water claims and flood-alone claims its the responsibility of the WYO Company.

(2) The WYO Company may use its staff adjusters and/or independent adjusters. It is important that the Company's Claims Department verifies the correctness of the coverage interpretations and reasonableness of the payments recommended by the adjusters.

(3) An established loss adjustment Fee Schedule is part of the Arrangement and cannot be changed during an Arrangement year. This is the expense allowance to cover costs of independent or WYO Company adjusters.

(4) The normal catastrophe claims procedure currently operated by a WYO Company should be implemented in the event of a claim catastrophe situation. Flood claims will be handled along with other catastrophe claims.

(5) It will be the WYO Company's responsibility to try to detect fraud (as it does in the case of property insurance) and coordinate its findings with FIA.

(6) Pursuant to the Arrangement, the responsibility of defending claims will be upon the Write-Your-Own Company and defense costs will be part of the unallocated or allocated claim expense allowance, depending on whether a staff counsel or an outside attorney handles the defense of the matter. Claims in litigation will be reported by WYO Companies to FIA upon joinder of issue and FIA may inquire and be advised of the disposition of such litigation.

(7) The claim reserving procedures of the individual WYO Company can be utilized.

(8) Regarding the handling of subrogation, if a WYO Company prefers to forego pursuit of subrogation recovery, it may do so by referring the matter, with a complete copy of the claim file, to FIA. Subrogation initiatives may be truncated at any time before suit is commenced (after commencing an action, special arrangement must be made). FIA, after consultation with FEMA's Office of General Counsel (OGC), will forward the cause of action to OGC or to the NFIP Servicing Agent for prosecution. Any funds received will be deposited, less expenses, in the National Flood Insurance Fund.

(9) Special allocated loss adjustment expenses will include such items as nonstaff attorney fees, engineering fees and special investigation fees over and above normal adjustment practices.

(10) The customary content of claim files will include coverage verification, normal adjuster investigations, including statements where necessary, police reports, building reports and investigations, damage verification and other documentation relevant to the adjustment of claims under the NFIP's and the WYO Company's traditional claim adjustment practices and procedures. The WYO Company's claim examiners and managers will supervise the adjustment of flood insurance claims by staff and independent claims adjusters.

(11) The WYO Company will extend reasonable cooperation to FEMA's Office of General Counsel on matters pertaining to litigation and subrogation, under paragraph (i)(8) of this section.

(j) To facilitate establishment of financial controls under the WYO Program, the WYO Company will:

(1) Conduct an annual self-audit of flood insurance business in respect to which the audit standards, level and

frequency of financial, claims and underwriting audits are set forth at Appendix B of this part.

(2) Submit an annual report of the WYO Company self-audit activities to the Standards Committee established pursuant to Appendix B of this part.

(3) Participate in an evaluation of the WYO Company self-audit plan on at least a triennial basis. The evaluation will be conducted by FIA and the WYO Company internal audit manager. A report of the evaluation will be filed with the Standards Committee and the Administrator.

(4) Participate in WYO Company/FIA Operation Reviews. The FIA Claims Director or designee and the FIA Underwriting Director or designee will conduct a review of the WYO Company flood insurance activities at least once every three (3) years. A report of the Operation Review will be filed with the Standards Committee.

(5) Meet the recording and reporting requirements of the WYO Statistical Plan and the WYO Accounting Procedures Manual. Transactions reported to the National Flood Insurance Program's (NFIP's) Servicing Agent by the WYO Company under the WYO Statistical Plan and the WYO Accounting Procedures Manual will be analyzed by the Servicing Agent and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company submissions, the disposition of transactions which do not pass systems edits and the reconciliation of the totals generated from transaction reports with those submitted on WYO Company reconciliation reports.

(6) Cooperate with FEMA's Office of the Comptroller on Letter of Credit matters.

(7) Cooperate with FIA's Claims Director in the implementation of a claims reinspection program.

(8) Cooperate with FIA's Underwriting Director in the verification of risk rating information.

(9) Cooperate with FEMA's Office of the Inspector General on matters pertaining to fraud.

(k) To facilitate the operation of the WYO Program and in order that a WYO Company can utilize its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act, the Administrator, for good cause shown, may grant exceptions to and waivers of the regulations contained in this Title relative to the administration of the NFIP.

(Information collection requirements contained in this section approved by Office of Management and Budget under Control No. 3067-0169)

[48 FR 46791, Oct. 14, 1983, as amended at 50 FR 16243, Apr. 25, 1985; 53 FR 15211, April 28, 1988]

APPENDIX A TO PART 62—FEDERAL EMERGENCY MANAGEMENT AGENCY—FEDERAL INSURANCE ADMINISTRATION

Financial Assistance/Subsidy Arrangement

Purpose: TO ASSIST THE COMPANY IN UNDERWRITING FLOOD INSURANCE USING THE STANDARD FLOOD INSURANCE POLICY

Accounting Data: Pursuant to section 1310 of the Act, a Letter of Credit shall be issued under Treasury Department Circular No. 1075, Revised, for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1985.

Issued by: Federal Emergency Management Agency, Federal Insurance Administration, Washington, DC 20472.

ARTICLE I—FINDINGS, PURPOSE, AND AUTHORITY

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the Program) "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of section 1310 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

ARTICLE II—UNDERTAKINGS OF THE COMPANY

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including
1.1 Community Eligibility/Rating Criteria
1.2 Policyholder Eligibility Determination
1.3 Policy Issuance
1.4 Policy Endorsements
1.5 Policy Cancellations
1.6 Policy Correspondence
1.7 Payment of Agents Commissions

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards. The FIA Claims Manual and Adjuster Management Outline, and Adjuster handbook can be used as guides by the Company, along with the National Flood Insurance Program (NFIP) Write-Your-Own (WYO) Financial Control Plan, Claims Questions and Answers Manual, the Flood Insurance Claims Office (FICO) Manual and other instructional materials.

3.0 Reports.

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of National Flood Insurance Program Statistical Plan for the Write-Your-Own (WYO) program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self audit acceptable to the FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing—15 days (NOTE: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);

1.1 Renewal Processing—7 days;

1.2 Endorsement Processing—7 days;

1.3 Cancellation Processing—15 days;

1.4 Correspondence, Simple and/or Status Inquiries—7 days;

1.5 Correspondence, Complex Inquiries—20 days;

1.6 Supply, Materials, and Manual Requests—7 days;

1.7 Claims Draft Processing—7 days from completion of file examination;

1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.

1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, *not* calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards can be a factor considered by the Federal Insurance Administrator (the Administrator) in determining the continuing participation of the Company in the Program.

C. The Company shall coordinate activities and provide information to the FIA or its designee on those occasions when a

Flood Insurance Catastrophe Office is established.

D. Policy Issuance

1.0 The Flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;

5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. All funds not required to meet current expenditures shall be remitted to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company may market flood insurance policies in any manner consistent with its customary method of operation.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. of this article, which amount shall equal the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement year) "Best's" Aggregates and Averages Property Casualty, Industry Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril combined (weighted average using premiums earned as weights) calculated and promulgated by the Administrator. Premium income net of reimbursement (net premium income) shall be deposited in a special account for the payment of losses and loss adjustment expenses (see Article II, Section E).

The Company shall be entitled to 14.0% of the Company's written premium on the policies covered by this Arrangement as the basic commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses. Additionally, the Company shall be entitled to 0.1% of the Company's written premium on the policies covered by this Arrangement for each 1% growth in the Company's policies in force on September 30 of this Arrangement Year, reduced by 80% of the number of policies scheduled for transfer to the Company during this Arrangement Year pursuant to the Company's request under the NFIP Rollover Procedures, over the policies in force on September 30 of the prior Arrangement Year; the additional commission allowance calculated under this provision is limited to a maximum of 3%. The Company may withhold 15% of the Company's written premium during this Arrangement Year with an adjustment up or down, depending upon policy growth, being made at the end of this Arrangement Year.

In the case where the Company had no policies in force on September 30 of the prior Arrangement Year, the Company shall be entitled to withhold 15% of the Company's written premium on the policies covered by this Arrangement as the commission allowance, with no adjustment at the end of this Arrangement Year.

Nothing in Article III, Section B, can be used as a means of increasing a Company's commission allowance by transferring business from one company to another company within a company group or by the merger or acquisition of another company. Payments of any additional commission allowance or refund of any excess commission allowance will be in accordance with the WYO Accounting Procedures Manual.

The Company, with the consent of the Administrator as to terms and costs, shall be entitled to utilize the services of a national rating organization, licensed under state law, to assist the FIA in undertaking and carrying out such studies and investigations on a community or individual risk basis, and in determining more equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company shall be reimbursed in accordance with the provisions of the WYO Accounting Procedures Manual for the charges or fees for such services.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D.1. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments will include payments as a result of awards or judgments for damages arising under the scope of this Arrangement, policies of flood insurance issued pursuant to this Arrangement, and the claims processing standards and guides set forth at Article II, Section A, 2.0 of this Arrangement. Prompt notice of any claim for damages as to claims processing or other matters arising outside the scope of this section (D)(2) shall be sent to the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services (OIPATS), along with a copy of any material pertinent to the claim for damages arising outside of the scope of the matters set forth in this section (D)(2).

Following receipt of notice of such claim, the General Counsel (OGC), FEMA, shall review the cause and make a recommendation to FIA as to whether the claim is grounded in actions by the Company which are significantly outside the provisions of this section (D)(2). After reviewing the General Counsel's recommendation, the Administrator will make his decision and the Company will be notified, in writing, within thirty (30) days of the General Counsel's recommendation, if the decision is that any award or judgment for damages arising out of such actions will not be recognized under Article III of this Arrangement as a reimbursable loss cost, expense or expense reimbursement. In the event that the Company wishes to petition for reconsideration of the notification that it will not be reimbursed for the award or judgment made under the above circumstances, it may do so by mailing, within thirty days of the notice declining to recognize any such award or judgment as reimbursable under Article III, a written petition to the Chairman of the WYO Standards Committee established under the Financial Control Plan. The WYO Standards Committee will, then, consider the petition at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator, within thirty days of the meeting. The Administrator's final determination will be made, in writing, to the Company within thirty days of the recommendation made by the WYO Standards Committee.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

ARTICLE IV—UNDERTAKINGS OF THE GOVERNMENT

A. A Treasury Financial Communication System Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed Federal Reserve Letter of Credit procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections (C), (D), and (E). Request for funds shall be made only when net premium income has been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit costs.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn against the Company for any of the following reasons:

1. Payment of claim as described in Article III, Section D; and

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. Allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

ARTICLE V—COMMENCEMENT AND TERMINATION

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the FEDERAL REGISTER and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, (2) the transfer to the FIA of:

a. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FIA, in a standard format and medium; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force which shall be allowed to run their their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

ARTICLE VI—INFORMATION AND ANNUAL STATEMENTS

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. The FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. The Company shall remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment shall not be paid by the Company from any portion of the premium and any funds derived from any Federal Letter of Credit deposited in the bank account described in Article II, section E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article X—Officials Not to Benefit

No Member or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because or insolvency of the Company.

All debt of credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

ARTICLE XII—EQUAL OPPORTUNITY

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

ARTICLE XIII—RESTRICTION ON OTHER FLOOD INSURANCE

As a condition of entering into this Arrangement the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

ARTICLE XIV—ACCESS TO BOOKS AND RECORDS

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

ARTICLE XV—COMPLIANCE WITH ACT AND REGULATIONS

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

ARTICLE XVI—RELATIONSHIP BETWEEN THE PARTIES (FEDERAL GOVERNMENT AND COMPANY) AND THE INSURED

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this—— day of————, 1985.

———————————————

Company

The United States of America Federal Emergency Management Agency

By ———————————————

—. ———————————————

(Title)

By ———————————————

———————————————

(Title)

EXHIBIT A

FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous assignment	$40.00
CWP	70.00
$0.01 to $200.00	70.00
$200.01 to $400.00	90.00
$400.01 to $600.00	110.00
$600.01 to $800.00	130.00
$800.01 to $1,000.00	150.00
$1,000.01 to $1,500.00	180.00
$1,500.01 to $2,000.00	200.00
$2,000.01 to $2,500.00	220.00

FEE SCHEDULE—Continued

Range (by covered loss)	Fee
$2,500.01 to $3,000.00	240.00
$3,000.01 to $3,500.00	260.00
$3,500.01 to $4,000.00	280.00
$4,000.01 to $4,5000.00	300.00
$4,500.01 to $5,000.00	320.00
$5,000.01 to $6,000.00	350.00
$6,000.01 to $7,000.00	370.00
$7,000.01 to $8,000.00	380.00
$8,000.01 to $9,000.00	400.00
$9,000.01 to $10,000.00	420.00
$10,000.01 to $15,000.00	460.00
$15,000.01 to $20,000.00	490.00
$20,000.01 to $25,000.00	520.00
$25,000.01 to $30,000.00	550.00
$30,000.01 to $35,000.00	580.00
$35,000.01 to $40,000.00	610.00
$40,000.01 to $45,000.00	640.00
$45,000.01 to $50,000.00	670.00
$50,000.01 to $75,000.00	800.00
$75,000.01 to $100,000.00	950.00
$100,000.01 to $125,000.00	1,100.00
$125,000.01 to $150,000.00	1,250.00
$150,000.01 to $175,000.00	1,400.00
$175,000.01 to $200,000.00	1,550.00
$200,000.01 to limits	1,700.00

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $50) and limited to the amounts of insurance purchased.

[50 FR 16245, Apr. 25, 1985; 50 FR 24772, June 13, 1985; 53 FR 15211, Apr. 28, 1988]

APPENDIX B TO PART 62—NATIONAL FLOOD INSURANCE PROGRAM

A Plan to Maintain Financial Control for Business Written Under the Write-Your-Own Program

Under the Write-Your-Own (WYO) Program, the Federal Insurance Administrator (Administrator) may enter into arrangements with individual private sector insurance companies that are licensed to engage in the business of property insurance, whereby these companies may offer flood insurance coverage to eligible property owners utilizing their customary business practices. To facilitate the marketing of flood insurance coverage, the Federal Government will be a guarantor of flood insurance coverage for WYO Company policies issued under the WYO Arrangement. To ensure that any taxpayer funds are accounted for and appropriately expended, the Federal Insurance Administration (FIA) and WYO Companies will implement this Financial Control Plan. Any departures from the requirements of this Plan must be approved by the Administrator. The authority for the WYO Program is contained in 44 CFR Parts 61 and 62, §§ 61.13 and 62.63. The WYO Financial Assistance/Subsidy Arrangement (Arrangement) is hereby made a part of this Plan, and a copy is contained in Part 8 of this Plan.

WYO Companies are subject to audit, examination, and regulatory controls of the various states. Additionally, insurance company operating departments are customarily subject to examinations and audits performed by Company internal audit (and/or quality control) departments and independent CPA firms. It is intended that this Plan utilize to the extent possible, the findings of these examinations and audits as they pertain to business written under the WYO Program (Parts 6 and 7).

The WYO Financial Control Plan contains several checks and balances which can, if properly implemented by the WYO Company, significantly reduce the need for extensive on-site reviews of Company files by the FIA staff or their designee. Furthermore, we believe that this process is consistent with customary reinsurance practices and avoids duplication of examinations performed under the auspices of individual State Insurance Departments, NAIC Zone examinations, and independent CPA firms.

The WYO Financial Control Plan requires the WYO Company to meet the minimum requirements established by the Standards Committee. The Standards Committee consists of three (3) members from FIA, one (1) member from the Federal Emergency Management Agency's (FEMA's) Office of the Inspector General, one (1) member from FEMA's Office of the Comptroller, and one (1) member from each of five (5) designated WYO Companies, pools or other entities.

The WYO Financial Control Plan must require the WYO Company to:

1. Conduct self-audit programs to meet the minimum requirements established by the Standards Committee and the AICPA Insurance Industry Audit Guide.

2. Submit an annual report of the WYO Company self-audit activities to the Standards Committee.

3. Participate in an evaluation of the WYO Company self-audit plan on at least a triennial basis. The evaluation will be conducted by the FIA Examination Division and the WYO Company's internal audit manager. A report of the evaluation will be filed with the Standards Committee and the Administrator.

4. Participate in a WYO Company/FIA Operation Review. The FIA Claims Director or designee and the FIA Underwriting Director or designee will conduct a review of the WYO Company's flood insurance activities at least once every three (3) years. These reviews, like the internal audit evaluation, will be conducted at the offices of the WYO Company. As a part of these reviews, specific files will be reconciled with a listing of transactions submitted by the Company under the WYO Statistical Plan. A report of the Operation Review will be filed with the Standards Committee (Parts 3 and 4).

5. Have a triennial audit of the flood insurance financial statements conducted by an independent accounting firm at the Company's expense to ensure that the financial data reported to FIA accurately represents the flood insurance activities of the Company.

6. Meet the recording and reporting requirements of the WYO Statistical Plan. Transactions reported to the National Flood Insurance Program's (NFIP's) Servicing Facility by the WYO Company under the WYO Statistical Plan will be analyzed by the Servicing Facility and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company's submissions, the disposition of transactions which do not pass systems edits, and the reconciliation of the total generated from transaction reports with those submitted on the WYO Company's reports (Part 2).

7. Cooperate with FEMA's Office of the Comptroller on Letter of Credit matters.

8. Cooperate with FIA's Claims Director or designee in the implementation of a claims reinspection program (Part 5).

9. Cooperate with FIA's Underwriting Director or designee in the verification of risk rating information.

10. Cooperate with FEMA's Office of the Inspector General on matters pertaining to fraud.

The Standards Committee will review and make a recommendation to the Administrator concerning any adverse action arising from the implementation of the Financial Control Plan. Adverse actions include, but are not limited to:

1. FIA Examination Division's recommendation to perform extensive on-site audits of WYO Company files. On-site audits will be conducted by third-party, independent firms as selected by FEMA.

2. FIA Examination Division's recommendation to not renew a particular Company's WYO arrangement.

3. Complaints by the WYO Company of unprofessional and/or uncooperative actions of FIA staff and/or the NFIP Servicing Facility.

This Plan includes the following guidelines:

Part 1—Model Self-Audit Program's Minimum Standards
Part 2—Statistical Plan Reconciliation Procedures
Part 3—Underwriting Operation Review Procedures
Part 4—Claims Operation Review Procedures
Part 5—Claims Reinspection Program
Part 6—Financial Audits and State Insurance Department Examinations
Part 7—Reports Certifications
Part 8—WYO Financial Assistance/Subsidy Arrangement (Incorporated by Reference)
Part 9—Statistical Plan (Incorporated by Reference)
Part 10—Write-Your-Own (WYO) Accounting Procedures (Manual)

PART 1—MODEL SELF-AUDIT PROGRAM'S MINIMUM STANDARDS

Self-Audit Program Objectives

The objectives are to establish minimum requirements by which all WYO Companies will conduct annual self-audits in the areas of underwriting, claims, financial control and statistical reporting. These requirements are consistent with guidelines established by the Standards Committee and the AICPA Insurance Industry Audit Guide.

These self-audits should:

1. Evaluate individual risk underwriting and claims handling based on the underwriting and claims examination process.

2. Ensure that standard underwriting and claims programs, systems and procedures are being utilized in an effective and proper manner.

3. Ensure that all financial and statistical reporting is reconcilable and conforms with established goverment procedures.

4. Review the quality of service and identify reasons for problems where applicable.

5. Provide recommendations to correct deficiencies and follow progress until deficiencies have been corrected.

6. Departures from these minimum standards require the written approval of the Federal Insurance Administrator.

Types of Samples

The use of any of the following samples is suitable in meeting the minimum standards of this self-audit program:

1. Judgment Sample—a sample based upon the judgment of the auditor.

2. Block Sample—a sample selected on the basis of consecutive time, with a 100% verification of all items in the "block".

3. Random Sample—a sample based on the concept that each item in the population has an equal chance of being in the sample.

4. Stratified random sample—a sample based on a specific portion of the population (i.e., A Zones, structures with basements, etc.) and random within that portion.

The sample size is adequate if it contains a sufficient number of items to show the same results as would be found in another sample of the same size from the same population. The sample should be a systematic representation of files selected based on a profile amount of premium represented in policy size groups. By using this method, a more meaningful file review could be made approaching 90% accuracy. The following sample sizes are suggested with the random sample or stratified random sample:

Population size	Sample size
0 to 99	27
100 to 149	36
150 to 249	40
250 to 399	45
400 to 599	48
600 to 1499	50
1,500 to 3,499	52
3,500 and up	54

Any other reviews which are conducted such as special ratings, large losses, repetitive losses should be specified and labeled as "special reviews".

Underwriting Audit Outline

1. Review of the Underwriting Department's responsibilities, authorities and composition.

2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.

3. Administrative review to verify compliance with company procedures.

4. Through examination of a random sample of underwriting files to measure the quality of work. At a minimum, files should be reviewed to verify the following:

Application Processing

a. Policies are issued for eligible risks.

b. Rates are correct and consistent with the amount of insurance requested on the application.

c. Waiting period for new business is consistent with government regulations.

d. Elevation certification or difference is correctly shown on application.

e. The coverage does not include more than one principal building and/or its contents per policy.

f. No binder is effective unless issued with the authorization of FIA.

g. The FIRM zone shown on the application is applicable to the community in which the property is located.

h. Community shown on application is eligible to purchase insurance under the NFIP.

i. Information on type of building, etc. is fully completed.

j. Applicable deductibles are recorded.

k. A new, fully completed application or a photocopy of the most recent application, or similar documentation, with appropriate updates to reflect current information is on file for each risk, including those formerly written by the NFIP Servicing Facility.

l. If any files to be audited are unavailable, determine the reason for their absence.

Endorsement Processing

a. Complete tasks above as applicable.

b. Review requests for additional coverage to ensure that they are subject to the waiting period rule.

c. Review controls established to ensure that no risk is insured under endorsement provisions that is not acceptable as a new business risk (i.e., a property located in a suspended community).

Cancellation Processing

Verify controls to ensure that one of the necessary reasons for cancellation exists and that the transaction is accompanied by proper documentation.

Renewal Processing

Determine controls to ensure that all necessary information needed to complete the transaction is provided.

Expired Policies

Determine controls to ensure that each step is carried out at the proper time.

Observance of Waiting Period

Establish procedures to document, as a matter of WYO Company business record and in each transaction involving a new application, renewal, and endorsement, that any applicable effective date and premium receipt rules have been observed (44 CFR 61.11). Documentation reasonably suitable for the purpose includes retention of postmarked envelopes (for three (3) years from date, or until the performance of an operational underwriting review, whichever is sooner); date-stamping and retention (via hard-copy or microfilm process) of application, renewal, and endorsement documents and checks received in payment of premium; computer input of document and premium receipt transactions and retention of such records in the computer system; and other reasonable insurer methods of verifying transactions involving requests for coverage and receipts of premium.

Claims Audit Outline

1. Review of the Claims Department's responsibilities, authorities and composition.

2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.

3. Administrative review to verify compliance with company procedures.

4. Thorough examination of a random sample of claims files to measure the quality of work. At a minimum, the files should be reviewed to verify the following:

a. Verify controls to ensure that a file is set up for each Notice of Loss received.

b. Review adjuster reports to determine whether they contain adequate evidence to substantiate the payment or denial of claims, including amount of losses claimed, any salvage proceeds, depreciation and potential subrogation.

c. Ascertain that building and contents allocations are correct.

d. Determine whether file contains evidence identifying subrogation possibilities.

e. Verify that partial payments were properly considered in processing the final draft or check.

f. Verify that loss payees are listed correctly (consider insured and mortgagee).

g. Verify that the total amount of the drafts or checks is within the policy limits.

h. Ascertain the relevance and validity of the criteria used by the carrier to judge effectiveness of its claim servicing operation.

i. Confirm that when information is received from an independent adjuster, the examiner either acts promptly to give proper feedback with instructions or takes action to pay or deny the loss.

j. Determine whether the Claims Department is using an "impression of risk" program in reporting misrated policies, etc.

k. Where attempts at fraud occur, verify that these instances are being reported to FIA's Assistant Administrator for Insurance Policy Analysis and Technical Services for referral to FEMA's Inspector General.

l. If any files to be audited are unavailable, determine the reason for their absence.

Statistical Plan Audit Outline

1. Review of the Accounting and Statistical/Data Processing Departments' responsibilities, authorities and composition.

2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.

3. Administrative review to verify compliance with company procedures.

4. Review general controls in data processing system to determine whether (1) the controls have been designed according to management direction and known requirements of the Arrangement, (2) the controls are operating effectively to provide reliability of and security over the data being processed, (3) the reporting is made timely and (4) error resubmissions receive appropriate priorities.

Financial Audit Outline

1. Review of the Accounting Department's responsibilities, authorities and composition.

2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.

3. Administrative review to verify compliance with company procedures.

4. The reviewer shall test the transactions and operations of the WYO Company to determine whether the program is in conformity with compliance requirements that have a material effect upon the NFIP financial position. Specifically, the auditor shall establish whether the carrier has incurred any unrecorded liabilities—contingent or actual—through failure to comply with, or through violation of, pertinent laws and regulations.

5. The reviewer shall determine whether the carrier is: (1) Maintaining an effective control on revenues, expenditures, assets and liabilities; (2) properly accounting for resources, liabilities and operations; (3) submitting external financial reports that contain accurate, reliable, and useful financial data and that they are fairly presented including proper statistical reconciliation procedures; and (4) expending federal funds for authorized purposes.

6. The review of the financial system will be used to determine whether:

a. Accounting is fully responsive to the reporting requirements of FEMA.

b. Financial transactions are executed as authorized and properly recorded.

c. Effective cash management is exercised. The management of cash includes the areas of accounts' receivable and payable and the custodial responsibilities and control systems over cash and the use of Letters of Credit cash advances.

d. Retention of various allowances and/or reimbursements are in conformity with the "Financial Assistance/Subsidy Arrangement".

PART 2—STATISTICAL PLAN RECONCILIATION PROCEDURES

Statistical Plan Reconciliation Objectives

The objectives are: To reconcile transaction detail with monthly financial statements submitted by the WYO Companies; to assess the quality and timeliness of submitted data; and to provide for the identification and resolution of discrepancies in the data. The reliance on computer processing to perform the review of transaction and financial data will help minimize the necessity for on-site audits of WYO Companies. Reconciliation of the statistical reports submitted will be performed by the WYO Companies and independently by the NFIP Servicing Facility.

The review of monthly financial statements and transaction level detail will involve five areas:

1. Financial control;
2. Quality control (audit trails);
3. Quality review of submitted data;
4. Policy rating; and
5. Timeliness of reporting.

Financial Control

1. WYO Companies are required to submit a reconciliation report (Exhibit "A") with the submission of transaction level detail. This report will reconcile the transaction records data to the financial report, explaining any discrepancies.

2. WYO Companies are required to submit, on a form approved by the Administrator, a tape transmittal document with the submission of the statistical tape containing transaction detail. This will be used to validate record counts and dollar amounts.

3. The NFIP will review, at a minimum, the categories on the attached format and produce a similar report reconciling the transaction data to the monthly financial statement submitted by each WYO Company.

4. To facilitate financial reconciliation, transaction records which do not pass various edits employed by the NFIP to review the quality of submitted data will be so identified, but still maintained whenever possible until the error is corrected by the company in order to reconcile all financial data submitted to the NFIP.

Quality Control

Transaction level detail will be maintained in policy and claim history files for record-keeping and audit purposes.

Quality Review of Submitted Data

1. Transaction records will be edited for correct format and values.

2. Relational edits will be performed on individual transactions as well as between policy and claim transactions submitted against those policies.

3. Record validation will be performed to check that the transaction type is allowable for the type of policy or claim indicated.

4. Errors will be categorized as critical or non-critical. The rate of critical errors in the submission of statistical data will be the basis by which company performance is reported to the Standards Committee. Critical errors include those made in required data elements. Required data elements:

(1) Identify the policyholder, the policy, the loss, and the property location;

(2) Provide information necessary to rate the policy;

(3) Provide information used in financial control;

(4) Provide information used for actuarial review of NFIP experience.

Non-critical errors are those made in data elements reported by the WYO Companies at their option."

Policy Rating

The rating will be validated by the NFIP for all policies for which the following transactions have been submitted:

1. New Business;
2. Renewals;
3. Endorsements involving type A transaction records; and
4. Corrections of type A transaction records previously submitted for premium transactions.

Incorrect rating will be considered a critical error.

Timeliness of Reporting

WYO Companies will be expected to submit monthly statistical and financial reports within thirty days of the end of the month of record.

The NFIP will produce reports based on review of submitted data within thirty days after the due date or the first processing cycle subsequent to the receipt of WYO Company submissions, whichever is later.

Monthly Reports

Reports for each WYO Company's data submission will be sent to the respective WYO Company and the FIA explaining any discrepancies found by the NFIP review.

Report to WYO Companies:

1. Transaction records that fail to pass the quality review or policy rating edits will be reported to the appropriate Company in transaction detail with error codes, classification of errors as either critical or non-critical and any codes used by the Company to identify the source of the transaction data.

Reports to WYO Companies and the FIA:

2. Summary statistics will be generated for each monthly submission of transaction data. These will include:

a. Absolute numbers of transactions read and transactions rejected by transaction type.

b. Dollar amounts associated with transactions read and transactions rejected.

3. Summary statistics for all policy and claim records submitted to date (which may each be the result of multiple transactions) will be generated, separately for critical and non-critical errors. These will include:

a. Absolute number of policy and claim records on file and those containing errors.

b. Relative values for the number of records containing critical errors.

4. Control totals will be generated for tapes submitted to and processed by the NFIP. This front-end balancing procedure will include:

a. Numbers of records submitted according to the NFIP compared with numbers of records submitted according to the WYO Company transmittal document.

b. Dollar amounts submitted according to the NFIP compared with dollar amounts submitted according to the WYO Company transmittal document.

If there is any discrepancy between the NFIP reading of dollar amounts from the tape and the WYO Company tape transmittal document, then the monthly statistical tape submission will be rejected and returned to the Company. The rejected tape must be corrected and resubmitted by the next monthly submission due date.

5. In cases where the NFIP reconciliation of transaction level detail with the financial statements does not agree with the reconciliation report submitted by the WYO Company, a separate report will be generated and transmitted to the Company for resolution and to the FIA.

Reporting of Company Rating to the Standards Committee and the Administrator

Satisfactory Rating

An annual end of the year report will be submitted to convey the satisfactory rating of WYO Companies' submission of transaction data and the reconciliation of this data with financial reports.

Unsatisfactory Rating

The report of an unsatisfactory rating will be submitted as soon as errors and problems reach critical threshold levels. This rating will be based on: Continuing problems in reconciling transaction data with financial reports; statistics on the percentage of transactions submitted with critical errors; the percentage of policy and claim records on file that contain critical errors; and, late submission of statistical and financial reports.

EXHIBIT "A".—WYO STATISTICAL TAPE TRANSMITTAL DOCUMENT

Date Sent: ______ WYO Prefix Code: ______
WYO Company Name: ______________
Address: ______________________
____
Reel Number (S) of Enclosed Tapes: ______
____
Density ______ LRECL ______ Blocksize ______
File Name (DSN) ______________
Contact Person ______________
Contact Number______________
IBU Number ______ (WYO Use Only)

MONTHLY RECONCILIATION—NET WRITTEN PREMIUMS

Company name .... Co. NAIC No ....
Month/year ending .... Date submitted ....
Preparer's name.................... Telephone No ....

Monthly financial report	Monthly statistical transaction report		
	Trans. code	Record count	Premium amount
Net Written premiums			
(Income statement = Line 100)	11		$
	15		
	17		
Unprocessed statistical:			
(+) Prior month's	20		
(−) Current month's	23		
Other—Explain:			
(+) Current month's	26		(−)
(−) Prior month's	29		(−)
	14 and 81		(+)
Total:	Total:		

Monthly financial report	Monthly statistical transaction report		
	Trans. code	Record count	Premium amoun
Comments:	(Add 11 Through 23 less 26 and 29)a0		

MONTHLY RECONCILIATION—LOSSES

Company name.................................... Co. NAIC No....................................
Month/year.................................... Date submitted....................................

	Trans. code	Record count	Loss/paid recoveries
100 Net paid losses.................... (Income statement line 115)	$		
Unprocessed statistical:			
	31		$
140 (+) Prior month's....................	34		
	37		
150 (−) Current month....................	40		
160 Salvage not to be reported by transaction (explain).	43		
170 Other—Explain....................	46 and 61		
	49		
	64		
	84 and 87		
	52 Recovery		
	Salvage		
	Subrogation		
	67 Recovery		
	Salvage		
	Subrogation		
Total: .... (Sum of Lines 100.140, 160, and 170 less 150)	Total: (Add 31, 34, 40 through 64 less 52 and 67)		
Comments:			

MONTHLY RECONCILIATION—SPECIAL ALLOCATED LAE

Company name.................................... Co. NAIC No....................................
Month/year ending.................................... Date submitted....................................

Monthly financial report	Monthly statistical transaction report		
	Trans. Code	Record Count	Amounts
Special allocated loss adjustment expenses.................... (Other loss and LAE Calc.—Line 055)			
	71		$
	74		
Unprocessed statistical:			
(+) Prior Month....................			
(−) Current Month....................			
Other—Explain:			
(1)....................			
(2)....................			
Total:	Total:		

Monthly financial report	Monthly statistical transaction report		
	Trans. Code	Record Count	Amounts
Comments:			

PART 3—UNDERWRITING/POLICY ADMINISTRATION OPERATION REVIEW PROCEDURES

The objectives are to establish procedures by which the FIA underwriter or designee will conduct at least a triennial review of a WYO Company's flood insurance policy administration/underwriting activities.

Notice

The WYO Company's representative would be notified in writing of the FIA underwriter's plan to conduct an Operation Review. This notice would profide the WYO Company at least 30 days to prepare for the Operation Review.

These Operation Reviews should:

1. Evaluate with the WYO Company's representative the underwriting/policy administration processes used to write flood insurance, furnishing financial and statistical data to the NFIP and ensuring accuracy and service in the issuance of policies.

2. Evaluate the timeliness and accuracy of actual transactions submitted in accordance with the Statistical Plan instructions. Policy files should be matched with printed transaction data extracted from NFIP statistical records. FIA may select policies which would be beneficial to the WYO Company's understanding of the underwriting and rating procedures. The number of policy files reviewed shall be determined by the following schedule.

Policies in force	Policy files reviewed
Under 25,000	50
25,000–74,999	75
75,000–99,999	100
100,000 and over	125

3. Provide the WYO Company's representative a briefing on the results of the evaluation under (1) and (2) to facilitate improvements in the underwriting/policy administration process.

4. Provide the WYO Company's representative an opportunity to respond to the evaluation and resolve outstanding matters.

5. Establish a schedule under which the FIA and/or the WYO Company's representative should provide additional information on matters still outstanding at the conclusion of the on-site visit.

6. Provide the WYO Company's representative with a copy of the draft report. The WYO Company's underwriter should be provided with a reasonable amount of time to respond in writing. The WYO Company's written response is to be made part of the Operation Review Report.

7. Provide the Standards Committee with a report on the results of the Operation Review.

NOTE: The following information is presented solely as a suggested Underwriting/Policy Administration Operation Review outline. The precise review format and the techniques employed to fulfill review objectives for a specific WYO Company would be based on that Company's processing environment and organizational configuration. In addition, the following information could be used as a guideline for a WYO Company's annual self-audit Program.

Underwriting/Policy Administration Operation Review Outline

1. *WYO Company Summary Report.* An overview would be provided by the WYO Company to the FIA underwriter, if requested, prior to the on-site review. See Exhibit "A".

2. *Administrative Review.* The review provides for the identification of and compliance with existent administrative, technical and functional policies or procedures. Exhibit B, the use of which is optional, provides a sample format for this review.

3. *Operational Activity (Applications, Policy and Endorsement Issuance, Cancellations).* The review provides for a three-year analysis of operational activities as follows:

a. Analysis of policies in force, applications entered, declinations and cancellations.

b. Analysis of type of business (Dwelling, General Property business).

c. Renewal processing systems.

d. Endorsement processing.

e. Analysis of observance of effective date rules relative to the above, as detailed in Part 1, under "Underwriting Audit Outline", at "Observance of Waiting Periods."

4. *File Review.* The review provides for a sampling of policy files. The general details to be covered in the individual files are in the "Specific Risk Review Checklist" (Exhibit "C"). Also, an "Underwriting Review Summary" (Exhibit "D"), the use of which is optional, provides a sample format, for the Risk Review portion of the report.
the report.

5. *Rating.* A review of rating activity would cover the following areas:

a. Internal review of rating accuracy.

b. Use of specific rates.

c. Correction procedure.

d. Timeliness of service.

e. Training procedures for staff and/or agents.

6. *Rating Data Verification.* A sampling of risks would be reviewed. A check would be made to determine:

a. Type of occupancy.

b. Type of structure.

c. Number of floors.

d. Basement type.

e. Elevated with enclosures.

f. Contents location.

g. Program.

h. Community.

i. Zone.

j. Elevation from elevation certificate.

k. Floodproofing.

l. Mortgagee.

m. Deductible.

n. Condominium.

Phone calls or on-site physical inspections of selected risks may be undertaken at the discretion of the WYO Company and the FIA Underwriting Division.

7. *Review of Appeals and/or Complaints (Those to the Insurance Department and those filed directly with the WYO Company).* The review would include the following:

a. Analysis of actions.

b. Analysis of average time frame required to resolve these cases.

8. *Reports.* The FIA underwriter or designee would file a report of the Operation Review with the WYO Company representative, the Standards Committee and the Administrator. The minimum level of detail in the report would be as follows:

a. *Satisfactory Rating.* The report would contain the time, place, and a list of participants in the review process. It would also contain the number of files examined along with any comments on their accuracy and condition that would be appropriate.

b. *Unsatisfactory Rating.* The report would be written as specifically as possible. Each unsatisfactory condition would be described and documented. Recommendations to the WYO Company's representative on steps to be taken to rectify any delay, error, or omission would be clearly stated with a time frame in which the corrective action would be accomplished. Follow up procedures would be worked out with the WYO Company's representative which would indicate the dates any progress reports would be filed with the Standards Committee and the Administrator.

NOTE: A suggested rating criteria would be the use of an overall error percentage. The overall error percentage would be applied to a standard and a rating would be developed. For instance, an overall error percentage equal to or greater than, depending on the nature of the files selected for review, 10% to 20% would be a basis for an unsatisfactory rating until a baseline developed from actual experience is determined. The overall percentage would be developed from the results of the file review. The errors on a file would be categorized as either critical or non-critical. One or more critical errors or three or more non-critical errors identified in a file would be considered as only one error when developing the overall error percentage.

The determination of what constitutes a critical or non-critical error would be based on established significant conditions. For example, critical error conditions would be as follows:

(1) Any error which impacted the correct rating of the policy (coverage amount, zone), or an endorsement.

(2) The insuring of an ineligible risk.

(3) The failure to obtain the information necessary to properly identify and underwrite a risk.

(4) The issuance of a policy with an incorrect policy term.

(5) Any error which impacts the correct return premium on a cancellation or nullification.

(6) The processing of a cancellation or nullification for an invalid reason.

EXHIBIT "A"—WYO COMPANY

Summary Report

The WYO Company would prepare a report summarizing the flood insurance operation within the Company including the following items:

1. A general statement describing the nature of the operational setup, whether in-house or through a vendor.

2. If in-house, the number of processing locations, person in charge of operations, staffing arrangement as appropriate, and operating relationships to other insurance activities.

3. If through a vendor, name and address, number of states involved, WYO Company representative responsible for dealing with vendor.

4. Optionally, exhibits and flow charts as appropriate.

EXHIBIT "B"—ADMINISTRATIVE REVIEW REPORT

A report would be prepared covering the following points, summarizing the activity in each area, giving examples and identifying those areas in need of attention.

1. *Policywriting, Rating and Endorsements:*

a. Prompt within service guidelines?

b. Is policy writing audited?

c. Are policy writing errors held to a minimum?

d. Is satisfactory action normally taken to ensure established eligibility standards are met?

e. Are there adequate procedures for handing specifically rated property?

2. *Bulletins, Guidelines and Manuals:*

a. Does each underwriter, policywriter, rater and coder have proper manuals available for their use?

b. Is there a procedure for maintaining manuals?

3. *Correspondence Files:*

a. In good order?

b. Procedures for destruction?

4. *Cancellation and Declination:*

a. Are procedures understood and requirements knowledgeably attended to?

5. *New Business:*

a. Are applications being properly checked?

6. *Specific Risk Review:*

Review areas that need attention from "Specific Risk Review Checklist" giving examples and recommendations for improvement.

7. *Renewal Procedures:*

a. Are they satisfactory?

b. Are non-renewal procedures satisfactory?

8. *Mortgagee Procedures:*

a. Are they satisfactory?

Exhibit "C"—Specific Risk Review Checklist

Date: ______

Occupancy:
( ) Single family
( ) 2-4 family
( ) Other residential
( ) Non residential

Policy No.______

Amount of insurance:
Building..........
Contents..........
Zone..........

Number of floors: ______

Condominium:
( ) Yes ( ) No

Basement:
( ) Yes ( ) No..........

Elevated Building:
( ) Yes ( ) No..........

Complete when appropriate:
Elevation difference..........
Base flood elevation..........
Lowest floor elevation..........
Grade elevation..........
Obstruction below elevated building: ....
( ) Yes ( ) No..........

	Yes	No	Comment if checked "No"
Application:			
Properly completed?			
Met eligibility—location requirements?.			
Policy:			
Properly issued?			
Required premium received? (If coverage was reduced to the amount that could be purchased with the premium submitted, check yes.).			
Are coverage limits within NFIP statutory allowances?			
Waiting period observed?			
Endorsements, renewals, cancellations:			
Properly issued?			
Required premium received or returned?			
Waiting period observed?			
Additional documentation:			
Is elevation certificate information valid and complete?			
If specifically rated, has company obtained the required information?			
File satisfactory for:			
Service within guidelines?			
Recertification?			

Comments—FIA Examiner

Comments—WYO Company Underwriter

Resolution

EXHIBIT "D".—UNDERWRITING REVIEW SUMMARY

Type of file or item	Total number reviewed	Total number held for manager
1. General property (commercial) files	______	______
2. Single-family and 2-4 family dwelling files	______	______
3. Multi-family dwelling and other general property files	______	______
4. Quote files	______	______
5. Declination files		
Community not eligible	______	______
Incomplete application (unable to rate)	______	______
Risk not eligible	______	______
Premium not submitted	______	______
Premium not sufficient	______	______
6. Other (designate type)	______	______
7.	______	______
8.	______	______
9.	______	______

PART 4—CLAIMS OPERATION REVIEW PROCEDURES

Claims Operation Review Objectives

The objectives are to establish procedures by which the FIA examiner or designee will conduct at least a triennial review of a WYO Company's flood insurance claims administration activities.

These Claims Operation Reviews should:

1. Evaluate with the WYO Company's claims manager or designee the claims administration processes used to: Settle flood insurance claims; provide financial and statistical data to the NFIP; and ensure accuracy and service in the handling of claims.

2. Evaluate the timeliness and accuracy of actual transactions submitted in accordance with the Statistical Plan instructions. Up to 5%, but not less than 50, of the claim files opened during the period covered by the Review should be matched with printed transaction data extracted from NFIP statistical records.

3. Provide the WYO Company's claims manager a briefing on the results of the evaluation under (1) and (2) to facilitate improvements in the claims administration processes.

4. Provide the WYO Company's claims manager an opportunity to respond to the evaluation and resolve outstanding matters.

5. Establish a schedule under which the FIA examiner and/or the WYO Company's claims manager should provide additional information on matters still outstanding at the conclusion of the on-site visit.

6. Provide the WYO Company's claims manager with a copy of the draft report. The WYO Company's claims manager should be provided with a reasonable amount of time to respond in writing. The WYO Company's written response is to be made part of the Operation Review Report.

7. Provide the Standards Committee with a report on the Operation Review.

Notice

The WYO Company's claims manager would be notified in writing of the FIA examiner's plans to conduct and Operation Review. This notice would provide the WYO Company at least 30 days to prepare for the Operation Review.

NOTE: The following information is presented solely as a suggested Claims Operation Review Outline. The precise review format and the techniques employed to fulfill review objectives for a specific WYO Company would be based upon the Company's processing environment and organizational configuration. In addition, the following information could be used as a guideline for a WYO Company's annual self-audit Program.

WYO-FIA Claims Operation Review Outline

1. *Claim Department's Responsibilities, Authorities, and Composition.* An overview of the Department's responsibilities, authorities and staffing composition (managerial, technical and clerical) would be provided by the WYO Company to the FIA examiner (Exhibit "A") prior to the on-site review. The overview would contain the following information:

a. Statement of Primary Function(s);
b. Relationship;
(1) WYO Company Management;
(2) Claim Division (FIA);
c. Responsibilities and Authorities; and
d. Staffing Composition.

2. *Administrative Review.* The review provides for the identification of and compliance with existent administrative, technical and functional policies or procedures. It examines relationships with other WYO Com-

pany Departments (Executive, Accounting, Underwriting and Data Processing) and inquiries as to the adequacy of controls and security.

a. Administrative Policies and/or Procedures.

b. Technical Procedures.

c. Functional (Clerical) Procedures.

In undertaking this portion of the examination, the "Administrative Review Checklist" (Exhibit "B") would be utilized.

3. *Claim Volumes—Payment (Loss and Expense) Review.* It provides for a three-year analyses of claim frequency and payment (loss and allocated expense) figures. Also, it would inquire into distribution of losses by size of loss and examine unallocated expenses. The analyses would be as follows:

a. Analysis of Claim Volumes and Payments (Exhibit "C").

b. Analysis of Special Allocated Claims Expenses ("Exhibit "C").

c. Analysis of Salvage and Subrogation Recoveries (Exhibit "C").

d. Analysis of Recovery Results (Exhibit "C").

e. Analysis of Losses by Size of Loss (Exhibit "D").

4. *Review of Appeals and/or Complaints (Those to the Insurance Department and those filed directly with the WYO Company).*

The review would include the following:

a. Analysis of actions.

b. Analysis of average time frame required to resolve these cases.

5. *File Review.* It provides for a thorough examination of a random sampling of claim files (open and closed) to measure the quality of investigations, adjustments and supervision. Claim Review Summary Worksheets (Exhibit "E") will be completed on each file examined. Specific comments on the file would be indicated on the worksheet. Further audit letters (Exhibit "F" and "G") would be sent on a representative number of closed cases.

Any circumstances indicating a substantive variance from existing Underwriting Rules would be communicated to the Underwriting Review Team (if present) and to the WYO Company's Underwriting Department.

6. *Worksheet Files.* The FIA claims examiner or designee would maintain separate operation review files for each Company. These files and any draft report written that relies on these files would include the WYO Company's responses. At the WYO Company's request, the FIA claims examiner would provide a copy of these files to the WYO Company's claims manager.

7. *Reports.* The FIA claims examiner or designee would file a report of the Operation Review with the WYO Company (Claims Manager and Internal Audit Manager), the Standards Committee and the Administrator. The minimum level of detail in the report would be as follows:

a. *Satisfactory Rating.* The report would contain the time, place, and a list of participants in the review process. It would contain the number of files examined with any comments on their accuracy and condition that would be appropriate.

b. *Unsatisfactory Rating.* The report would be written as specifically as possible. Each unsatisfactory condition would be described and supported by documentation. Recommendations to the WYO Company's claims manager on steps to be taken to rectify any delay, error, or omission would be clearly stated with a time frame in which the corrective action would be accomplished. Follow up procedures would be worked out with the WYO Company's claims manager which would indicate the dates progress reports would be filed with the Standards Committee and the Administrator.

NOTE: A suggested rating criteria would be the use of an overall error percentage. The overall error percentage would be applied to a standard and a rating would be developed. For instance, an overall error percentage of 20% or higher would be a basis for an unsatisfactory rating until a baseline developed from actual experience is determined. The overall percentage would be developed from the results of the file review. The errors on a file would be categorized as either critical or non-critical. One or more critical errors or three or more non-critical errors identified in a file would be considered as only one error when developing the overall error percentage.

The determination of what constitutes a critical or non-critical error would be based on established significant conditions. For example, critical error conditions would be as follows:

(1) An error which resulted in a claim payment where no coverage was present.

(2) An error which resulted in an incorrect payment amount.

(3) Failure to process a claim in accordance with established procedures which caused significant delay in closing.

EXHIBIT "A"—CLAIM DEPARTMENT RESPONSIBILITIES, AUTHORITIES, AND COMPOSITION

The WYO Company would prepare a report summarizing the flood insurance Claim Department's organizational position within the Company and the resources available to perform the claims settlement function.

1. *Attach Organization Chart.*

a. Indicate lines of authority and functional dependencies for only those departments involved in the WYO Company's flood insurance activities.

b. Show the names of key personnel involved in the WYO Company's flood insurance activities.

2. Attach exhibits and the written description of the information required under Item 1. of the WYO-FIA Claims Operations Review Outline.

EXHIBIT "B".—ADMINISTRATIVE REVIEW CHECKLIST

"Policy #
Insured's name:
State:
Date of loss:
Date paid:
Date reported:
Amt. of loss: $
Bldg. $
Contents $
Adjusting firm:
Examiner's name:
Comments:

---

1. *Investigation and Adjustments.*

a. Application of Coverage.

	Yes	No	N/A
(1) Insurable interest?	[ ]	[ ]	[ ]
(2) Is loss from the flood peril?	[ ]	[ ]	[ ]
(3) Did loss occur within policy term?	[ ]	[ ]	[ ]
(4) Does location and description of risk coincide with policy information?	[ ]	[ ]	[ ]
(5) Were proper deductibles applied?	[ ]	[ ]	[ ]
(6) Other insurance considered?	[ ]	[ ]	[ ]
(7) Other losses?	[ ]	[ ]	[ ]

b. Application of Sound Adjusting Pra- tices.

	Yes	No	N/A
(1) Was adjuster's report accurate/ complete?	[ ]	[ ]	[ ]
(2) Was an attorney used in the settlement?	[ ]	[ ]	[ ]
(3) Was a technical expert used in the settlement?	[ ]	[ ]	[ ]

c. Documentation.

	Yes	No	N/A
(1) Are damages clearly identified?	[ ]	[ ]	[ ]
(2) Are damages flood related?	[ ]	[ ]	[ ]
(3) Are damages clearly and completely itemized and documented by the adjuster?	[ ]	[ ]	[ ]
(4) Was depreciation considered?	[ ]	[ ]	[ ]
(5) Has subrogation been considered?	[ ]	[ ]	[ ]
(6) Has salvage been properly handled?	[ ]	[ ]	[ ]
(7) Was salvage timely?	[ ]	[ ]	[ ]

2. *Supervision.*

a. Assignments.

	Yes	No	N/A
(1) Are assignments made promptly?	[ ]	[ ]	[ ]
(2) Is insured contacted promptly?	[ ]	[ ]	[ ]

b. Reserves.

	Yes	No	N/A
(1) Are initial reserves indicated on the first report?	[ ]	[ ]	[ ]
(2) Are they adequate?	[ ]	[ ]	[ ]

	Yes	No	N/A
(3) Does final settlement compare favorably with last reserve established?	[ ]	[ ]	[ ]

c. Diary Control.

	Yes	No	N/A
(1) Automatic?	[ ]	[ ]	[ ]
(2) Timely?	[ ]	[ ]	[ ]
(3) Is file reviewed at diary date with examiner's comments?	[ ]	[ ]	[ ]

d. Examiner Evaluation and Settlement Performances.

	Yes	No	N/A
(1) Is examiner directing adjuster when needed?	[ ]	[ ]	[ ]
(2) Are files documented?	[ ]	[ ]	[ ]
(3) Is adequate control maintained over in-house adjuster?	[ ]	[ ]	[ ]
(4) Is adequate control maintained over outside adjuster?	[ ]	[ ]	[ ]

e. Salvage and subrogation.

	Yes	No	N/A
(1) Is salvage evaluated by salvors?	[ ]	[ ]	[ ]
(2) Is salvage disposed of promptly?	[ ]	[ ]	[ ]
(3) Are salvage returns adequate?	[ ]	[ ]	[ ]
(4) Is potential subrogation being promptly and properly investigated?	[ ]	[ ]	[ ]
(5) Are proper subrogation forms used?	[ ]	[ ]	[ ]
(6) Are subrogation and salvage files properly opened, diaried, and referred (if appropriate)?	[ ]	[ ]	[ ]
(7) Are recovery funds for subrogation and salvage being properly handled?	[ ]	[ ]	[ ]

f. Suits.

	Yes	No	N/A
(1) Are suits properly identified?	[ ]	[ ]	[ ]
(2) Are suits being properly evaluated	[ ]	[ ]	[ ]
(3) Are suits being referred to attorneys promptly?	[ ]	[ ]	[ ]
(4) Are attorneys being advised as to handling settlement or compromise?	[ ]	[ ]	[ ]
(5) Are suits being properly controlled?	[ ]	[ ]	[ ]
(6) Are suits files properly diaried?	[ ]	[ ]	[ ]
(7)-(8) [Reserved]			
(9) Is the statistical reporting correction file being properly managed?	[ ]	[ ]	[ ].

g. Other.

	Yes	No	N/A
(1) Was there other coverage by the WYO Company?	[ ]	[ ]	[ ]
(2) Were damages correctly apportioned?	[ ]	[ ]	[ ]
(3) Was a solo adjuster used?	[ ]	[ ]	[ ]
(4) Were there prior flood claims?	[ ]	[ ]	[ ]
(5) Were prior damages repaired?	[ ]	[ ]	[ ]
(6) Were prior claim files reviewed?	[ ]	[ ]	[ ]

	Yes	No	N/A
(7) Was a congressional complaint letter in file?	[ ]	[ ]	[ ]
(8) Was it responded to promptly?	[ ]	[ ]	[ ]

EXHIBIT "C"—ANALYSIS OF CLAIM VOLUMES AND PAYMENTS

CLAIM VOLUME

Line	Number of claims CAT#	Number of claims CAT#	Number of claims CAT#	Number of claims CAT#	Total Number of claims non-CAT#
Dwelling form					
General prop					
Totals					

LOSS PAYMENTS

Line	Payments	Payments	Payments	Payments	Payments
Dwelling form					
General prop					
Totals					

SPECIAL ALLOCATED EXPENSE PAYMENTS

Line	Payments	Payments	Payments	Payments	Payments
Dwelling form					
General prop					
Totals					

SALVAGE RECOVERY

Line	Number of claims affected	Number of claims affected	Number of claims affected	Number of claims affected	Number of claims affected
Dwelling form					
General prop					
Totals					

SUBROGATION CASES

Line	Number of claims affected	Number of claims affected	Number of claims affected	Number of claims affected	Number of claims affected
Dwelling form					
General prop					
Totals					

RECOVERY RESULTS ANALYSIS

	19—recoveries				Pct to payments			
	Subrogation		Salvage		Subrogation		Salvage	
	Gross	Net	Gross	Net	Gross	Net	Gross	Net
1st Quarter								
2d Quarter								
3d Quarter								
4th Quarter								
Year totals								

NOTE: Gross means the total amount recovered. Net means the "gross" less expenses of recovery.

EXHIBIT "D"

ANALYSIS OF LOSSES BY SIZE OF LOSS

Size	Building coverage		Contents coverage	
	WYO Company number of claims	Total NFIP number of claims	WYO Company number of claims	Total NFIP number of losses
$1 to $2,000				
$2,001 to $5,000				
$5,001 to $10,000				
$10,001 to $15,000				
$15,001 to $20,000				
$20,001 to $50,000				
$50,001 and Up				
Total				
Average Claim Cost	$	$	$	$

ANALYSIS OF LOSS RESERVES

Size	Building coverage		Contents coverage	
	WYO Company number. of claims	Total NFIP number of claims	WYO Company number of claims	Total NFIP number of losses
$1 to $2,000				
$2,001 to $5,000				
$5,001 to $10,000				
$10,001 to $15,000				
$15,001 to $20,000				
$20,001 to $50,000				
$50,001 and Up				
Total				
Average Claim Cost	$	$	$	$

NOTE: These exhibits will be developed by the NFIP for review with the WYO Company's claims manager.

EXHIBIT "E"

CLAIM REVIEW SUMMARY WORKSHEET

NCPI

Company ____________ Examiner ____________ Date ____________

FILE NUMBER	INSURED	DATE				POLICY FORM	CAUSE OF LOSS	ADJUSTER	CLAIM PAYMENT	TIMELINESS			COVERAGE			INVESTIGATION					VERIFY LOSS		ADJUST CLAIM			MISCELLANEOUS					[illegible]	COMMENTS
		OF LOSS	NOTICE REC.	PAID	CLOSED					CONTACT	CLAIM CONTROL	[illegible]		COVERED HAZARD	[illegible]	[illegible]	POLICE/FIRE DEPT. RECORDS	SALVAGE	SUBROGATION	[illegible]	HOW WAS AMOUNT OF LOSS VERIFIED	[illegible]	[illegible]	CO-INS. CONSIDERED	[illegible]	[illegible]	ADJ. REPORT	[illegible]	[illegible]	[illegible]		

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EXHIBIT "F".—NCPI

Suggested Letter Where Photocopy of Claim Payment Draft Is Available

Dear ——————————

Claim # ——————————

Date of Loss: ——————————

Our auditors are conducting a routine examination of our operations, one phase of which is a review of claim payments. Will you be good enough to confirm a payment made to you? To provide you with what we believe is sufficient information, a copy of the claim payment draft is enclosed.

Is the information shown on draft #——— (as enclosed) correct? (Yes or No)

Your Signature

——————————

If you find the enclosed information to be accurate, please sign in the space provided above. If the information is incorrect in any way, please indicate the discrepancy on the reverse side of this letter. In either event, we would appreciate your returning this letter in the enclosed business reply envelope.

Thank you for your cooperation.

Very truly yours,

EXHIBIT "G".—NCPI

Suggested Letter Where Photocopy of Claim Payment Draft Is Not Available

Dear ——————————

Our auditors are conducting a routine examination of our operations, one phase of which is a review of claim payments.

If you find the following record to be accurate, please sign in the space provided. If this information is incorrect in any way, please indicate the discrepancy on the reverse side. In either event, we would appreciate your returning this letter to our auditors in the enclosed business reply envelope.

Thank you for your cooperation.

Very truly yours,

——————————

Claim No. Date of Loss Policy Number

——————————

Date Claim Paid Amount Paid

——————————

Name of Insured Payment Made to

——————————

The Information is Correct? (Yes or No)

Your Signature ——————————

PART 5—CLAIMS REINSPECTION PROGRAM

WYO—NFIP Claims Reinspection Program

To keep WYO-NFIP Claims Management informed, to assist in the overall claims operation, and to provide necessary assurances and documentation for dealing with GAO, Congressional Oversight Committees, and the public, the FIA and WYO Companies have established a Claims Reinspection Program. The Program is comprised of the following major elements:

1. All files are subject to reinspection.
2. Files for reinspection may be randomly selected by flood event, or size of loss, class of business, as determined by WYO-NFIP Claims Management.
3. Ten percent of open files will be reinspected prior to payment unless WYO-NFIP Claims Management determines that a larger or smaller sample is in order (e.g., due to the size of the catastrophe).
4. An agreed upon sample of closed files, by event, will be subjected to reinspection as well.
5. A WYO representative will conduct the reinspection, accompanied by an NFIP General Adjuster.
6. A joint, single report will be issued by the WYO Company representative and the NFIP General Adjuster.
7. Copies of reinspection reports will be forwarded to the Claims Management of both the WYO Company and the NFIP.
8. The reinspection report, adapted for flood insurance business, may be in the format of the "Property Reinspection Report" developed by the Functional Audit Task Force of the National Committee on Property Insurance (EXHIBIT "A").

NCPI PROPERTY REINSPECTION REPORT

Insured's name File # Telephone #

Insured's address

Adjuster's name Office or address

Type of loss Date of loss

Amount paid Date paid

Date assigned

Date insured contacted Date of inspection

Difference in scope of damage Yes No

If yes—explain:

Adjuster used correct amounts for labor/materials? Yes No Combined wind and flood loss? Yes No

NCPI PROPERTY REINSPECTION REPORT—Continued

If no—explain:

Adjuster applied policy provisions? Yes No
If no—explain:

Insured's comments on handling:
Did adjuster visit insured/loss personally? Yes No
Did adjuster suggest any repairers, etc.? Yes No
Insured's comments:

General comments:

Date of reinspection

Reinspector signature

PART 6—FINANCIAL AUDITS, AUDITS FOR CAUSE, AND STATE INSURANCE DEPARTMENT AUDITS

A. Triennial Financial Audits

I. Objectives of WYO Triennial Financial Audit—The triennial financial audit is intended to provide the Federal Emergency Management Agency with independent assessment of the quality of financial controls over activities relating to the Company's participation in the National Flood Insurance Program as well as the integrity of the financial data reported to FEMA. Participating WYO companies are responsible for selecting and funding independent Certified Public Accounting firms to conduct the triennial audits. Such costs are considered part of the normal administrative cost of operating the WYO program and as such are included in the WYO expense allowance.

It is also intended that the triennial audit will reduce if not eliminate the need for FEMA auditors or their designees to conduct on-site visits to WYO companies in their review of financial activity. However, the requirement may still exist for such visits to occur as determined by the auditors. In addition, nothing in this section should be construed as limiting the ability of the General Accounting Office to review the activities of the WYO Program.

The objective of the triennial audit is to ensure that Financial data reported to FEMA for the Arrangement Year (Government Fiscal Year) is fairly and accurately presented in order to determine that:

A. Policy and claim related financial data as reported to the NFIP are proper and adequately supported by underlying documentation.

B. Reported cash amounts are properly reconciled to the bank account balance.

C. Reported accounts receivable, premi
suspense and accounts payable balances
properly stated.

D. Cash management is in accordan
with the requirements of the WYO A
counting Procedures Manual and consiste
with the Company's procedures as upda
to FEMA.

II. Internal Controls and Suggested Pro
dures. A. The nature, timing and extent
audit tests to be applied are to be dete
mined by the independent Certified Pub
Accounting firm based on its study and ev
uation of the WYO Company's accounti
procedures and system of internal contr
Adequate evaluation requires knowled
and understanding of the WYO accounti
and financial reporting procedures pr
scribed by the Arrangement and a reaso
ble degree of assurance that they are in u
and are operating effectively (e.g., annu
WYO Company self-audit).

B. The audit tests described below are su
gested tests and are to be modified as co
sidered necessary by the independent Certi
fied Public Accounting firm, based on i
study and evaluation of WYO Company'
accounting procedures, system of interna
control and results of company WYO sel
audits. Based on such study and evaluatio
the independent Certified Public Accoun
ing firm may consider additional steps to b
necessary, may consider certain of the aud
tests described below to be unnecessary, o
may consider additions to or reductions i
the extent of such audit tests to be appro
priate. Each elimination and/or reductio
shall be described in the independent Certi
fied Public Accounting firm's report. Se
Part IV below.

III. Audit Tests. A. Tie total written pre
mium from policy master file to the month
ly financial reports.

1. Trace reconciling items to the subsequent month's financial report; and

2. Obtain evidence that items included with the second monthly financial report dated on or before the date of the reconciliation were included as reconciling items, if appropriate. Investigate, as required, reconciling items not clearing with the second monthly financial report.

B. Select a representative sample of policies which were in-force during all or part of the Arrangement Year under audit for detail testing.

1. Confirm policy detail with policyholder (e.g., policy number, effective date, policy term, premium, insured property address, deductible amounts).

2. Determine that policy detail from policy file agrees with statistical data from the master file submitted to the NFIP.

3. Select a sample of policy cancellations and endorsements from throughout the fiscal year and determine the propriety of the financial reporting associated with such transactions (e.g., return premium, additional premium and appropriate application of the expense allowance).

C. Tie total paid losses and outstanding loss reserves, allocated and special allocated adjustment expenses, including outstanding reserves, from policy master file to monthly financial reports.

1. Trace reconciling items to the subsequent month's financial reports, and;

2. Obtain evidence that items included with the second statement dated on or before the date of the reconciliation are included as reconciling items, if appropriate. Investigate, as required, reconciling items not clearing with the second monthly financial report.

D. Select a representative sample of claims activity during the Arrangement Year for detail testing.

1. Confirm policy number, claim number, loss payment, loss date, and date-of-loss payment with policyholder.

2. Determine whether special allocated LAE payment, as applicable, has been properly approved prior to incurring any expenses.

3. Determine that claim status in claim file agrees with data submitted to the NFIP, and that the policy was in-force on the date of loss.

4. Verify that unallocated loss adjustment expense was appropriately determined and reported.

5. Review IBNR reserve calculation to determine whether it is consistent with the methodology reported to FEMA.

6. Determine whether adjustments to the outstanding case reserves are proper and made on a timely basis.

7. If salvage or subrogation is significant in relation to the company's claims activity, select a sample of recoveries to determine that they were properly recorded (data from claims file agrees with submission to the NFIP).

E. Determine whether cash receipts are being promptly deposited to the Restricted Account and that excess cash is being swept from the account in accordance with the WYO Accounting Procedures Manual.

F. Determine whether reimbursements from the Restricted Account or drawdowns on the Treasury Letter-of-Credit are made in accordance with the WYO Accounting Procedures Manual.

G. Obtain bank reconciliations for the restricted account and any other flood-related account(s) as of the end of the Arrangement Year. Review bank reconciliations for old and/or unusual reconciling items. Reconcile restricted account activity to premium and claim data reported in monthly financial reports on a sample basis.

H. Reconcile accounts receivable, accounts payable, premium suspense and other miscellaneous trial balances to reported amounts. Test the propriety of the detail on a sample basis.

I. Make inquiries of management and review available reports relating to activity subsequent to year-end for items that should have been included in Arrangement Year results.

B. Audits for Cause

In accordance with the terms of the WYO Arrangement, the Administrator, on his own initiative or upon written recommendation of the WYO Standards Committee or the FEMA Inspector General, may conduct for-cause audits of participating companies. The following criteria, in combination or independently, may constitute the basis for initiation of such an audit:

1. Self-Audit

—Adequate reporting was not received from a company, even after follow-up requests.

—Self-audit report did not meet criteria of the Financial Control Plan.

—Review of the reported self-audit results indicates problem areas which require further explanation or follow-up.

—Reports of self-audit results do not adequately respond to problems or deficiencies raised through other aspects of the Financial Control Plan (i.e., errors/rejects from statistical reporting, financial reporting discrepancies, financial/statistical reconciliation problems, etc.)

—Triennial audit results indicate that the self-audits were not adequately performed and that the reported results cannot be relied upon.

2. Underwriting

—Excessively high frequency of errors in underwriting:

a. Issuing policies for ineligible risks.

b. Issuing policies in ineligible communities.

c. Consistent premium rating errors.

d. Missing or insufficient documentation for submit for rate policies.

e. Other patterns of consistent errors.

—Abnormally high rate of policy cancellations or non-renewals.

—Policies not processed in a timely fashion.

—Duplication of policy coverage noted.

—Problems with Rollover from National Flood Insurance Program (NFIP) to WYO (duplication of coverage, timeliness of changeover).

—Relational type edits indicate an unusually high or low premium amount per policy for the geographical area.

—Self-audit or triennial audit results indicate unusual volume of errors in underwriting.

3. Claims

—Reinspections indicate consistent patterns of:

a. Losses being paid when not covered.

b. Statistical information being reported on original loss adjustment found to be incorrect on reinspection.

c. Salvage/subrogation not being adequately addressed.

d. Consistent overpayments of claims.

—Unusually high count of erroneous assignments and/or claims closed without payment (CWP). (WYO Company is paid a flat fee for CWP cases where little or no work is done—risk is fraudulent CWP cases).

—Unusually low count of CWP. (May indicate inadequate follow-up of claims submitted).

—Average claim payments which significantly exceed the average for the Program as a whole.

—Lack of (adequate) documentation for paid claims.

—Claims not processed in a timely fashion.

—Consistent failure of WYO Company to receive authorization for special allocated loss adjustment expenses prior to incurring them.

—High submission of Special Allocated Loss Adjustment Expenses (SALAE).

—Consistently high policyholder complaint level.

—Low/high count of salvage/subrogation.

—Triennial audit indicates significant problems.

4. Financial Reporting/Accounting

—Consistently high reconciliation variations and/or errors in statistical information.

—Financial and/or statistical information not received in a timely fashion.

—Letter of Credit violations are found.

—WYO Company is not depositing funds to the Restricted Account in a timely manner, or funds are not being transferred through the automated clearing house on a timely basis.

—Premium suspense is consistently significant, older than 60 days, and/or cannot be detailed sufficiently.

—Large/unusual balance in Cash-Other (Receivable and/or Payable).

—Large, unexplained differences in cash reconciliation.

—Large/unusual balances or variations between months noted for key reported financial data.

—Financial statement to statistical data reconciliation sheets improperly completed indicating proper review of information is not being performed prior to signing certification statement.

—Repeated failure to respond fully in a timely manner to questions raised by FIA or its servicing agent concerning monthly financial reporting.

—Triennial audit indicates significant problems.

C. State Insurance—Department Examination

It is expected that audits of WYO Companies by independent accountants and/or state insurance departments, aside from those conducted by the FIA or its designee, will include flood insurance activity. When such audits occur, a financial officer for the WYO Company will notify the FIA, identifying the auditing entity and providing a brief statement of the overall conclusions that relate to flood insurance and the insurer's financial condition, when available. In the case of an audit in progress, a brief statement on the scope of the audit should be provided to the FIA. A checklist will be utilized for this reporting and will be provided to WYO Companies by the FIA.

The WYO Companies will maintain on file the reports resulting from audits, subject to on-site inspection by the FIA or its designee. At the FIA's request, the WYO Company will submit a copy of the auditor's opinion, should one be available, summarizing the audit conclusion.

pages tightly bound

PART 7—REPORTS CERTIFICATIONS

A. Certification Statement for Monthly Financial and Statistical Reconciliation Reports

I have reviewed the accompaning financial and statistical reconciliation reports of XYZ Company as of ————. All information included in these statements is the representation of the XYZ Company.

Based on my review (with the exception of the matter(s) described in the following paragraphs, if applicable), I certify that I am not aware of any material modifications that should be made to the accompanying reports.

Signed ————————————

(Responsible Financial Officer)

Date ————————————

B. Certification Statement for Monthly Statistical Transaction Report

I have reviewed the accompanying statistical transaction report control totals in conjunction with appropriate statistical reconciliation reports. All information included in these reports is the representation of the XYZ Company.

Signed ————————————

(Responsible Reporting Officer)

Date ————————————

[50 FR 16248, Apr. 25, 1985; 53 FR 15212, Apr. 28, 1988, 53 FR 26559, July 13, 1988]

PART 63—IMPLEMENTATION OF SECTION 1306(c) OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

Subpart A—General

Sec.
63.1 Purpose of part.
63.2 Condemnation in lieu of certification.
63.3 Requirement to be covered by a contract for flood insurance by June 1, 1988.
63.4 Property not covered.
63.5 Coverage for contents removal.
63.6 Reimbursable relocation costs.
63.7 Amount of coverage and deductible on effective date of condemnation or certification.
63.8 Limitation on amount of benefits.
63.9 Sale while claim pending.
63.10 Demolition or relocation contractor to be joint payee.
63.11 Requirement for a commitment before October 1, 1989.
63.12 Setback and community flood plain management requirements.

Sec.

Subpart B—State Certification of Structures Subject to Imminent Collapse

63.13 Purpose of subpart.
63.14 Criteria for State qualification to perform imminent collapse certifications.
63.15 State application for eligibility to certify structures subject to imminent collapse.
63.16 Review of State application by the Administrator.
63.17 Procedures and data requirements for imminent collapse certifications by States.
63.18 Review of State certification by the Administrator.

AUTHORITY: 42 USC 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 53 FR 36975, Sept. 23, 1988, unless otherwise noted.

Subpart A—General

§ 63.1 Purpose of part.

The purpose of this part is to implement section 1306(c) of the National Flood Insurance Act of 1968, as amended (the Act). Section 544 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) amended the Act by adding subsection (c) to section 1306 of the Act. Under this amendment, effective February 5, 1988, section 1306(c) of the Act provides for benefit payments under the Standard Flood Insurance Policy (SFIP) for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. This part establishes criteria by which States can obtain the approval of the Administrator to make these certifications and sets forth the procedures and data requirements to be used by those States in making these certifications. This part also contains provisions regarding other aspects of section 1306(c) of the Act. For example, there are provisions regarding section 1306(c)(6)(B) of the Act (which provides for condemnation in lieu of certification), including clarification as to the form of condemnation issued under a State or local law that is required.

§ 63.2 Condemnation in lieu of certification.

(a) The condemnation required by section 1306(c)(6)(B) of the Act in lieu of certification need not be grounded in a finding that the structure is subject to imminent collapse or subsidence as a result of erosion, but may be issued for other reasons deemed sufficient by the State or local authority.

(b) The condemnation may be in the form of a court order or other instrument authorized by State or local law, e.g., a notification to the property owner of an unsafe condition, or unsanitary condition, or other deficiency at the property address, coupled with a statement that the property owner must vacate the property if the condition giving rise to the condemnation notice is not cured by repair, removal, or demolition of the building by a date certain.

(c) In addition to a condemnation in accordance with paragraphs (a) and (b) of this section, a structure must be found by the Administrator to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels to be eligible for benefits under section 1306(c) of the Act.

§ 63.3 Requirement to be covered by a contract for flood insurance by June 1, 1988.

The requirement in section 1306(c)(4)(C)(i) of the Act that a structure be "covered by a contract for flood insurance under this title—(i) on or before June 1, 1988" was met if presentation of the appropriate premium and a properly completed flood insurance application form was made to the National Flood Insurance Program or a Write Your Own (WYO) Company on or before June 1, 1988.

§ 63.4 Property not covered.

Benefits under section 1306(c) of the Act do not include compensation for items excluded under the provisions of the Standard Flood Insurance Policy (SFIP).

§ 63.5 Coverage for contents removal.

Whenever a structure is subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels and otherwise meets the requirements of section 1306(c) of the Act so that benefits are payable under those provisions, the coverage in the definition of "Direct Physical Loss by or from Flood" in the SFIP for the expense of removing contents, up to the minimum deductible of $500.00, to protect and preserve them from flood or from the imminent danger of flood, applies if contents coverage is in effect.

§ 63.6 Reimbursable relocation costs.

In addition to the coverage described in § 63.5 of this part, relocation costs for which benefits are payable under section 1306(c) of the Act include the costs of:

(a) Removing the structure from the site,

(b) Site cleanup,

(c) Debris removal,

(d) Moving the structure to a new site, and

(e) At the new site, a new foundation and related grading, including elevating the structure as required by local flood plain management ordinances and sewer, septic, electric, gas, telephone, and water connections at the building.

§ 63.7 Amount of coverage and deductible on effective date of condemnation or certification.

The amount of building coverage and the deductible applicable to a claim for benefits under section 1306(c) of the Act are what was in effect on the date of condemnation or certification.

§ 63.8 Limitation on amount of benefits.

(a) In section 1306(c)(3)(C) of the Act, the phrase "under the flood insurance contract issued pursuant to this title" means the value of the structure under section 1306(c)(3)(C) of the Act is limited to the amount of building coverage provided by the insured's policy.

(b) Where the amount payable under section 1306(c)(1)(A)(ii) of the Act for the cost of demolition, together with the amount payable under section 1306(c)(1)(A) of the Act for the value of the structure under the demolition option, exceeds the amount of building coverage provided by the insured's policy, such amounts will be paid beyond the amount of that building coverage, even if this payment exceeds the limits of coverage otherwise authorized by section 1306(a) of the Act for the particular class of property.

§ 63.9 Sale while claim pending.

If a claimant sells a structure prior to its demolition or relocation, no benefits are payable to that claimant under section 1306(c) of the Act, and any payments which may have been made under those provisions shall be reimbursed to the insurer making them.

§ 63.10 Demolition or relocation contractor to be joint payee.

If a demolition or relocation contractor is used, the instrument of payment for benefits under section 1306(c) of the Act for the fee of that contractor, shall include that contractor as a joint payee, unless that contractor has already been paid when the instrument of payment is issued.

§ 63.11 Requirement for a commitment before October 1, 1989.

The requirement in section 1306(c)(7) of the Act that a commitment be made on or before September 30, 1989 as a necessary condition to making any payments after September 30, 1989, is met if before October 1, 1989,

(a) There is either a condemnation in accordance with § 63.2 of this part or a certification in accordance with subpart B of this part, and

(b) A policyholder's notice of claim for benefits under section 1306(c) of the Act is received by the insurer.

§ 63.12 Setback and community flood plain management requirements.

(a) Where benefits have been paid under section 1306(c) of the Act, the setback requirements in section 1306(c)(5) of the Act, which if not met result in a prohibition against subsequently providing flood insurance or assistance under the Disaster Relief Act of 1974, shall apply:

(1) To the structure involved wherever it is located, and

(2) To any other structure subsequently constructed on or moved to the parcel of land on which the structure involved was located when the claim under section 1306(c) of the Act arose.

(b) In addition, any structures relocated under section 1306 of the Act must comply with the flood plain management criteria set forth in § 60.3 of this chapter.

Subpart B—State Certification of Structures Subject to Imminent Collapse

§ 63.13 Purpose of subpart.

The purpose of this subpart is to establish criteria under the provisions of section 1306(c) of the National Flood Insurance Act of 1968, as amended, by which States can obtain approval from the Administrator to certify that structures are subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. The subpart also sets forth the procedures and data requirements to be utilized by those States in certifying structures as subject to imminent collapse. The State certification procedure represents an option to the use of the procedure whereby a structure is condemned by a State or local authority as a prerequisite to consideration for imminent collapse insurance benefits.

§ 63.14 Criteria for State qualification to perform imminent collapse certifications.

In order to qualify under this subpart, the State must be administering a coastal zone management program which includes the following components, as a minimum:

(a) A state-wide requirement that prohibits new construction and the relocation of structures seaward of an adopted erosion setback. Such setback must be based in whole or in part on some multiple of the local mean annual erosion (recession) rate; and

(b) An established, complete and functional data base of mean annual erosion rates for all reaches of coastal shorelines subject to erosion in the State, which is used as the basis to enforce these setback requirements.

§ 63.15 State application for eligibility to certify structures subject to imminent collapse.

(a) Application pursuant to this part shall be made by the Governor or other duly authorized official of the State.

(b) The application must be submitted to the Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472.

(c) Documents to be included in the application are as follows:

(1) Copies of all applicable State statutes and regulations verifying the existence of a coastal zone management program including setback requirements for new and relocated construction which are based in whole or in part on mean annual erosion rates established for the State's shorelines.

(2) A copy of the State's mean annual erosion rate data base, if not already provided, showing such rates for all reaches of coastal shorelines subject to erosion within the State.

(3) The title, address and phone number of a contact person within the State agency having authority for administering the coastal zone management program.

(4) A statement that adequate resources are available to carry out the certification services, and that certifications will be performed in accordance with the procedures described in § 63.17.

§ 63.16 Review of State application by the Administrator.

(a) The Administrator may return the application for eligibility upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the adequacy of the coastal zone management program and erosion rate data base.

(b) Upon determining that the State's program and/or data base does not meet the criteria set forth in § 63.14, the Administrator shall in writing reject the application for eligibility and indicate in what respects the State program and/or data base fails to comply with the criteria.

(c) Upon determining that the State program and data base meets the criteria set forth in § 63.14, the Administrator shall approve the State as eligible to certify structures subject to imminent collapse. Such approval, however, is in all cases provisional. The Administrator shall review the State program and data base for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the program and/or data base is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Administrator may revoke his approval.

§ 63.17 Procedures and data requirements for imminent collapse certifications by States.

Any State that has been determined to be eligible by the Administrator may certify that a coastal structure is subject to imminent collapse. Such certification requires that the State collect scientific or technical information relative to the structure and its site and provide such information to the insured to be filed with a claim for insurance benefits under Section 1306 of the National Flood Insurance Act of 1968, as amended. The information which is provided to the insured shall include, but is not limited to, the following:

(a) Certification from the State agency that the structure is subject to imminent collapse. The certification shall cite the property address, legal description (e.g., lot, block), the date of, and basis for the certification, and

(b) Supporting scientific and technical data to substantiate the certification consisting of the following:

(1) Photographs of the structure in relation to the obvious peril. All photographs should be labeled with the location, direction, date and time from which they were taken. The collection of photographs should adequately display the following:

(i) Any evidence of existing damage. The damage can include loss or erosion of soil near or around the foundation, or structural damage to the foundation components.

(ii) Structure and waterbody. These photographs shall show both the structure and the waterbody that presents the peril. If the structure is on a high bluff or dune and not accessible from the water side, the top edge of the bluff or dune will be sufficient. These will usually be taken from one or both sides of the structure.

(iii) Physical reference features used in the measurements discussed below. The reference feature shall be in or near the area affected by normal tides, when applicable. If a reference is not clearly distinguishable on the photograph, it should be annotated to identify the feature. If possible, all reference features described below should be photographed showing their relationship to the site of the threatened structure.

(2) Identification and selection of reference features. The following reference features are presented according to priority. If the first feature is not present, the next feature shall be located and photographed, and so forth.

(i) Top edge of bluff (cliff top).

(ii) Top edge of escarpment on an eroding dune (i.e., a nearly vertical erosional cut at the seaward face of the dune). The normal high tide should be near the toe of the dune and there should be indications that the dune is actively eroding.

(iii) The normal high tide limit may be indicated by one of the following:

(A) Vegetation line (the seaward most edge of permanent vegetation).

(B) Beach scarp (erosion line on beach, usually a sharp, nearly vertical drop of 0.5 to 3.0 feet at the upper limit of high tide).

(C) Debris line deposited by the normal high tide, not by a recent storm.

(D) Upper limit of wet sand.

(3) Distance measurements from the threatened structure to the nearest points on the reference features. These measurements should be taken from all photographed reference features to the closest point on the supporting foundation. For purposes of making this measurement, decks, stairs, and other exterior attachments that do not contribute to the structural support of the building are not considered part of the structure. The measurements shall be taken horizontally with a tape and recorded to the nearest foot. The date and time of the measurement shall be noted. The location of the measurements (i.e., reference feature and closest structural member) shall be identified on the appropriate photograph or sketch of the site. If some or all of the reference features coincide, this shall also be noted and identified on the photographs. Reference features landward of the structure need not be measured, but shall be noted on the photographs.

(4) A determination of the average annual erosion rate at the site and a copy of the pertinent section of the reference document used to obtain the annual erosion rate at the site.

(5) Copy of the effective Flood Insurance Rate Map panel annotated with the location of the threatened structure.

(6) In the event that a structure is not situated within a "zone of imminent collapse" using the criteria and procedures in § 63.17(b) (1) through (5), then the State may submit other scientific and technical data, in addition to the information described in § 63.17(b) (1) through (5), that would reveal unusual erosive or stability conditions at the site. Such data must include engineering analyses or reports performed on the structure or site which evaluates local rates of erosion, or the condition or stability of the structure's foundation including supporting soil.

(c) In the case of structures planned to be relocated, a certification as to whether the proposed relocation site is outside the 30-year setback for 1-4 family residential structures, or outside the 60-year setback for all other structures, must also be submitted by the State.

§ 63.18 Review of State certification by the Administrator.

The Administrator, after a claim has been filed by the property owner, will review the certification and data prepared by the State. Upon completion of the review, the State will be notified that:

(a) The structure has been determined to be subject to imminent collapse, or

(b) The structure has not been determined to be subject to imminent collapse and the basis for such determination, or

(c) Additional data are needed to verify that the procedures and criteria for imminent collapse certification have been met.

PART 64—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Sec.
64.1 Purpose of part.
64.2 Definitions.
64.3 Flood Insurance Maps.
64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.
64.5 Relationship of rates to zone designations.
64.6 List of eligible communities.

AUTHORITY: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, E.O. 12127.

§ 64.1 Purpose of part.

(a) 42 U.S.C. 4012(c), 4022 and 4102 require that flood insurance in the maximum limits of coverage under the regular program shall be offered in communities only after the Administrator has: (1) Identified the areas of special flood, mudslide (i.e., mudflow) or flood-related erosion hazards within the community; and/or (2) completed a risk study for the applicant community. The priorities for conducting such risk studies are set forth in §§ 59.23 and 60.25 of this subchapter. The purpose of this part is to define the types of zones which the Agency will use for identifying the haza areas on maps.

(b 42 U.S.C. 4056 authorizes emergency implementation of the Na tional Flood Insurance Progra whereby the Administrator may mak subsidized coverage available to eligi ble communities prior to the comple tion of detailed risk studies for suc areas. This part also describes proce dures under the emergency progra and lists communities which becom eligible under the NFIP.

[48 FR 28278, June 21, 1983, as amended 49 FR 4751, Feb. 8, 1984; 49 FR 33879, Au 27, 1984]

§ 64.2 Definitions.

The definitions set forth in Part 5 of this subchapter are applicable t this part.

[41 FR 46986, Oct. 26, 1976. Redesignated 44 FR 31177, May 31, 1979]

§ 64.3 Flood Insurance Maps.

(a) The following maps may be pre pared by the Administrator for use in connection with the sale of flood insurance:

(1) Flood Insurance Rate Map (FIRM): This map is prepared after the risk study for the community has been completed and the risk premium rates have been established. It indicates the risk premium rate zones applicable in the community and when those rates are effective. The symbols used to designate those zones are as follows:

Zone symbol	
A	Area of special flood hazard witho water surface elevations determined.
A1-30, AE	Area of special flood hazard wi water surface elevations determined.
A0	Area of special flood hazards havin shallow water depths and/or un predictable flow paths between (1 and (3) ft.
A99	Area of special flood hazard when enough progress has been mad on a protective system, such a dikes, dams, and levees, to consider it complete for insura rating purposes.

Zone symbol	
AH	Areas of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) feet, and with water surface elevations determined.
V	Area of special flood hazards without water surface elevations determined, and with velocity, that is inundated by tidal floods (coastal high hazard area).
V1-30, VE	Area of special flood hazards, with water surface elevations determined and with velocity, that is inundated by tidal floods (coastal high hazard area).
VO	Area of special flood hazards having shallow water depths and/or unpredictable flow paths between (1) and (3) ft. and with velocity.
B, X	Area of moderate flood hazards.
C, X	Area of minimal hazards.
D	Area of undetermined but possible, flood hazards.
M	Area of special mudslide (i.e., mudflow) hazards.
N	Area of moderate mudslide (i.e., mudflow) hazards.
P	Area of undetermined, but possible, mudslide hazards.
E	Area of special flood-related erosion hazards.

Areas identified as subject to more than one hazard (flood, mudslide (i.e., mudflow), flood-related erosion) will be designated by use of the proper symbols in combination.

(2) Flood Hazard Boundary Map (FHBM). This map is issued by the Administrator delineating Zones A, M, and E within a community.

(b) Notice of the issuance of new or revised FHBMs or FIRMs is given in Part 65 of this subchapter. The mandatory purchase of insurance is required within designated Zones A, A1-30, AE, A99, A0, V1-30, VE, V, V0, M, and E.

(c) The FHBM or FIRM shall be maintained for public inspection at the following locations:

(1) The information office of the State agency or agencies designated by statute or the respective Governors to cooperate with the Administrator in implementing the Program whenever a community becomes eligible for Program participation and the sale of insurance pursuant to this section or is identified as flood prone.

(2) One or more official locations within the community in which flood insurance is offered.

(3) [Reserved]

(4) The official record copy of each official map shall be maintained in FEMA files in Washington, D.C.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 46 FR 1274, Jan. 6, 1981; 48 FR 28278, June 21, 1983; 48 FR 44544 and 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985]

§ 64.4 Effect on community eligibility resulting from boundary changes, governmental reorganization, etc.

(a) When a community not participating in the Program acquires by means of annexation, incorporation, or otherwise, an area within another community participating in the Program, no new flood insurance shall be made available as of the effective date of annexation until the newly acquiring community participates in the Program. Until the effective date of participation, existing flood insurance policies remain in effect until the policy's date of expiration, but shall not be renewed.

(b) When a community participating in the Program acquires by means of annexation, incorporation, or otherwise, another area which was previously located in a community either participating or not participating in the Program, the community shall have six months from the date of acquisition to formally amend its flood plain management regulations in order to include all flood-prone areas within the newly acquired area. The amended regulations shall satisfy the applicable requirements in § 60.3 of this subchapter based on the data previously provided by the Administrator. In the event that the newly acquired area was previously located in a community participating in the Program, the provisions of this section shall only apply if the community, upon acquisition, and pending formal adoption of the amendment to its flood plain management regulations, certifies in writing over the signature of a community official that within the newly acquired area the flood plain management requirements previously applicable in the area remain in force. In the event that the newly-acquired area was previously located in a community not participating in the Program, the provisions of the section shall only apply if the community, upon acquisition, and pending formal adoption of the amendments to its flood plain management regulations, certifies in writing over the signature of a community official that it shall enforce within the newly-month period, existing flood insurance policies shall remain in effect until their date of expiration may be renewed, and new policies may be issued. Failure to satisfy the applicable requirements in § 60.3 shall result in the community's suspension from Program participation pursuant to § 59.24 of this subchapter.

(c) When an area previously a part of a community participating in the Program becomes autonomous or becomes a portion of a newly autonomous community resulting from boundary changes, governmental reorganization, changes in state statutes or constitution, or otherwise, such new community shall be given six months from the date of its independence, to adopt flood plain management regulations within the special hazard areas subject to its jurisdiction and to submit its application for participation as a separate community in order to retain eligibility for the sale of flood insurance. The regulations adopted by such new community shall satisfy the applicable requirements in § 60.3 of this subchapter based on the data previously provided by the Administrator. The provisions of this section shall only apply where the new community upon the date of its independence certifies in writing over the signature of a community official that, pending formal adoption of flood plain management regulations, the flood plain management requirements previously applicable in that area remain in effect. During the six month period, existing flood insurance policies shall remain in effect until their dates of expiration may be renewed, and new policies may be issued. Failure to satisfy the applicable requirements in § 60.3 of this subchapter shall result in the community's suspension from Program participation pursuant to § 59.24 of this subchapter.

(d) Where any community or any area within a community had in effect a FHBM or FIRM, but all or a portion of that community has been acquired by another community, or becomes autonomous, that map shall remain in effect until it is superseded by the Administrator, whether by republication as part of the map of the acquiring community, or otherwise.

(e) When a community described in paragraph (a), (b), (c), or (d) of this section has flood elevations in effect, no new appeal period under Parts 66, 67, and 68 of this subchapter will begin except as new scientific and technical data are available.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 64.5 Relationship of rates to zone designations.

(a) In order to expedite a community's qualification for flood insurance under the emergency program, the Administrator may authorize the sale of such insurance without designating any Zones A, M, or E within a community, provided the community has previously adopted flood plain management regulations meeting the requirements of § 60.3(a), § 60.4(a) or § 60.5(a) of this subchapter. When the Administrator has obtained sufficient technical information to delineate Zones A, M, or E, he/she shall delineate the tentative boundaries on a FHBM.

(b) Upon the effective date of the FIRM, flood insurance will continue to be available throughout the entire community at chargeable rates (i.e., subsidized) for first layer coverage of existing structures, but will be only available at risk premium rates for all new construction and substantial improvements. Upon the effective date of a FIRM, second layer coverage is available only at risk premium rates for all structures.

(c) Detailed insurance information may be obtained from the servicing companies. See Part 62 of this subchapter.

[41 FR 46986, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44552, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 64.6 List of eligible communities.

The sale of flood insurance pursuant to the National Flood Insurance Program (42 U.S.C. 4001–4128) is authorized for the communities set forth under this section. Previous listings under this part continue in effect until revised.

[41 FR 46986, Oct. 25, 1976]

Editorial Note: For references to FR pages showing lists of eligible communities, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

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65.13 List of communities submitting new technical data.

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 65.1 Purpose of part.

42 U.S.C. 4104 authorizes the Director to identify and publish information with respect to all areas within the United States having special flood, mudslide (i.e., mudflow) and flood-related erosion hazards. The purpose of this part is to outline the steps a community needs to take in order to assist the Agency's effort in providing up-to-date identification and publication, in the form of the maps described in Part 64, on special flood, mudslide (i.e., mudflow) and flood-related erosion hazards.

[48 FR 28278, June 21, 1983]

§ 65.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in Part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a certification by a registered professional engineer or other party does not constitute a warranty or guarantee of performance, expressed or implied. Certification of data is a statement that the data is accurate to the best of the certifier's knowledge. Certification of analyses is a statement that the analyses have been performed correctly and in accordance with sound engineering practices. Certification of structural works is a statement that the works are designed in accordance with sound engineering practices to provide protection from the base flood. Certification of "as built" conditions is a statement that the structure(s) has been built according to the plans being certified, is in place, and is fully functioning.

[51 FR 30313, Aug. 25, 1986]

§ 65.3 Requirement to submit new technical data.

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Administrator of the changes by submitting technical or scientific data in accordance with this part. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

[51 FR 30313, Aug. 25, 1986]

§ 65.4 Right to submit new technical data.

(a) A community has a right to request changes to any of the information shown on an effective map that does not impact flood plain or floodway delineations or base flood elevations, such as community boundary changes, labeling, or planimetric details. Such a submission shall include appropriate supporting documentation in accordance with this part and may be submitted at any time.

(b) All requests for changes to effective maps, other than those initiated by FEMA, must be made in writing by the Chief Executive Officer of the community (CEO) or an official designated by the CEO. Should the CEO refuse to submit such a request on behalf of another party, FEMA will agree to review it only if written evidence is provided indicating the CEO or designee has been requested to do so.

[51 FR 30313, Aug. 25, 1986]

§ 65.5 Revision to special hazard area boundaries with no change to base flood elevation determinations.

(a) *Data requirements for topographic changes.* In many areas of special flood hazard (excluding V zones and floodways) it may be feasible to elevate areas with earth fill above the base flood elevation. Scientific and technical information to support a request to gain exclusion from an area of special flood hazard of a structure or parcel of land that has been elevated by the placement of fill shall include the following:

(1) A copy of the recorded deed indicating the legal description of the property and the official recordation information (deed book volume and page number) and bearing the seal of the appropriate recordation official (e.g., County Clerk or Recorder of Deeds).

(2) If the property is recorded on a plat map, a copy of the recorded plat indicating both the location of the property and the official recordation information (plat book volume and page number) and bearing the seal of the appropriate recordation official. If the property is not recorded on a plat map, copies of the tax map or other suitable maps are required to aid FEMA in accurately locating the property.

(3) If a legally defined parcel of land is involved, a topographic map indicating present ground elevations and date of fill. FEMA's determination as to whether a legally defined parcel of land is to be excluded from the area of special flood hazard shall be based upon a comparison of the ground elevations of the parcel with the elevations of the base flood. If the ground elevations of the entire legally defined parcel of land are at or above the elevations of the base flood, the parcel may be excluded from the area of special flood hazard.

(4) If a structure is involved, a topographic map indicating structure location and ground elevations including the elevations of the lowest floor (including basement) and the lowest adjacent grade to the structure. FEMA's determination as to whether a structure is to be excluded from the area of special flood hazard shall be based upon a comparison of the elevation of the lowest floor (including basement) and the elevation of the lowest adjacent grade with the elevation of the base flood. If the entire structure and the lowest adjacent grade are at or above the elevation of the base flood, the structure may be excluded from the area of special flood hazard.

(5) Data to substantiate the base flood elevation. If FEMA has completed a Flood Insurance Study (FIS), that data will be used to substantiate the base flood. Otherwise, data provided by an authoritative source, such as the U.S. Army Corps of Engineers, U.S. Geological Survey, U.S. Soil Conservation Service, state and local water resource departments, or technical data prepared and certified by a registered professional engineer may be submitted. If base flood elevations have not previously been established, hydraulic calculations may also be requested.

(6) Where fill has been placed to raise the ground surface to or above the base flood elevation and the request to gain exclusion from an area of special flood hazard includes more than a single structure or a single lot, it must be demonstrated that fill will

not settle below the elevation of the base flood, and that the fill is adequately protected from the forces of erosion, scour, or differential settlement as described below:

(i) Fill must be compacted to 95 percent of the maximum density obtainable with the Standard Proctor Test method issued by the American Society for Testing and Materials (ASTM Standard D-698). This requirement applies to fill pads prepared for residential or commercial structure foundations and does not apply to filled areas intended for other uses.

(ii) Fill slopes for granular materials are not steeper than one vertical on one-and-one-half horizontal unless substantiating data justifying steeper slopes is submitted.

(iii) Adequate protection is provided fill slopes exposed to flood waters with expected velocities during the occurrence of the base flood of five feet per second or less by covering them with grass, vines, weeds, or similar vegetation undergrowth.

(iv) Adequate protection is provided fill slopes exposed to flood waters with velocities during the occurrence of the base flood of greater than five feet per second by armoring them with stone or rock slope protection.

(7) A revision of flood plain delineations based on fill must demonstrate that any such fill has not resulted in a floodway encroachment.

(b) *New topographic data.* The procedures described in paragraphs (a) (1) through (5) of this section may be also followed to request a map revision when no physical changes have occurred in the area of special flood hazard, when no fill has been placed, and when the natural ground elevations, as evidenced by new topographic maps, more detailed or more accurate than those used to prepare the map to be revised, are shown to be above the elevation of the base flood.

(c) *Certification requirements.* The items required in paragraphs (a) (3) and (4) and (b) of this section shall be certified by a registered professional engineer or licensed land surveyor. Items required in paragraph (a)(6) of this section shall be certified by the community's NFIP permit official, a registered professional engineer, or an accredited soils engineer. Such certifications are subject to the provisions of § 65.2 of this subchapter.

(d) *Submission procedures.* All requests shall be submitted to the appropriate FEMA Regional Office servicing the community's geographic area.

[51 FR 30313, Aug. 25, 1986]

§ 65.6 Revision of base flood elevation determinations.

(a) *General conditions and data requirements.* (1) The supporting data must include all the information FEMA needs to review and evaluate the request. This may involve the requestor's performing new hydrologic and hydraulic analysis and delineation of new flood plain boundaries and floodways, as necessary.

(2) To avoid discontinuities between the revised and unrevised flood data, the necessary hydrologic and hydraulic analyses submitted by the map revision requestor must be extensive enough to ensure that a logical transition can be shown between the revised flood elevations, flood plain boundaries, and floodways and those developed previously for areas not affected by the revision. Unless it is demonstrated that it would not be appropriate, the revised and unrevised base flood elevations must match within one-half foot where such transitions occur.

(3) Revisions cannot be made based on the effects of proposed projects or future conditions. Section 65.8 of this subchapter contains provisions for obtaining conditional approval of proposed projects that may effect map changes when they are completed.

(4) The datum and date of releveling of benchmarks, if any, to which the elevations are referenced must be indicated.

(5) Maps will not be revised when discharges change as a result of the use of an alternative methodology or data for computing flood discharges unless the change is statistically significant as measured by a confidence limits analysis of the new discharge estimates.

(6) In order for an alternative hydraulic or hydrologic methodology to be accepted, any computer program

used must be accepted for general use by a governmental agency or notable scientific body, must be well documented including a user's and programmer's manual, and must be available to the general user.

(7) A revised hydrologic analysis for flooding sources with established base flood elevations must include evaluation of the same recurrence interval(s) studied in the effective FIS, such as the 10-, 50-, 100-, and 500-year flood discharges.

(8) A revised hydraulic analysis for a flooding source with established base flood elevations must include evaluation of the same recurrence interval(s) studied in the effective FIS, such as the 10-, 50-, 100-, and 500-year flood elevations, and of the floodway. Unless the basis of the request is the use of an alternative hydraulic methodology or the requestor can demonstrate that the data of the original hydraulic computer model is unavailable or its use is inappropriate, the analysis shall be made using the same hydraulic computer model used to develop the base flood elevations shown on the effective Flood Insurance Rate Map and updated to show present conditions in the flood plain. Copies of the input and output data from the original and revised hydraulic analyses shall be submitted.

(9) A hydrologic or hydraulic analysis for a flooding source without established base flood elevations may be performed for only the 100-year flood.

(10) A revision of flood plain delineations based on topographic changes must demonstrate that any topographic changes have not resulted in a floodway encroachment.

(11) Delineations of flood plain boundaries for a flooding source with established base flood elevations must provide both the 100- and 500-year flood plain boundaries. For flooding sources without established base flood elevations, only 100-year flood plain boundaries need be submitted. These boundaries should be shown on a topographic map of suitable scale and contour interval.

(12) If a community or other party seeks recognition from FEMA, on its FHBM or FIRM, that an altered or relocated portion of a watercourse provides protection from, or mitigates potential hazards of, the base flood, the Administrator may request specific documentation from the community certifying that, and describing how, the provisions of § 60.3(b)(7) of this subchapter will be met for the particular watercourse involved. This documentation, which may be in the form of a written statement from the Community Chief Executive Officer, an ordinance, or other legislative action, shall describe the nature of the maintenance activities to be performed, the frequency with which they will be performed, and the title of the local community official who will be responsible for assuring that the maintenance activities are accomplished.

(13) Notwithstanding any other provisions of § 65.6, a community may submit, in lieu of the documentation specified in § 65.6(a)(12), certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

(b) *Data requirements for correcting map errors.* To correct errors in the original flood analysis, technical data submissions shall include the following:

(1) Data identifying mathematical errors.

(2) Data identifying measurement errors and providing correct measurements.

(c) *Data requirements for changed physical conditions.* Revisions based on the effects of physical changes that have occurred in the flood plain shall include:

(1) *Changes affecting hydrologic conditions.* The following data must be submitted:

(i) General description of the changes (e.g., dam, diversion channel, or detention basin).

(ii) Construction plans for as-built conditions, if applicable.

(iii) New hydrologic analysis accounting for the effects of the changes.

(iv) New hydraulic analysis and profiles using the new flood discharge values resulting from the hydrologic analysis.

(v) Revised delineations of the flood plain boundaries and floodway.

(2) *Changes affecting hydraulic conditions.* The following data shall be submitted:

(i) General description of the changes (e.g., channelization or new bridge, culvert, or levee).

(ii) Construction plans for as-built conditions.

(iii) New hydraulic analysis and flood elevation profiles accounting for the effects of the changes and using the original flood discharge values upon which the original map is based.

(iv) Revised delineations of the flood plain boundaries and floodway.

(3) *Changes involving topographic conditions.* The following data shall be submitted:

(i) General description of the changes (e.g., grading or filling).

(ii) New topographic information, such as spot elevations, cross sections grading plans, or contour maps.

(iii) Revised delineations of the flood plain boundaries and, if necessary, floodway.

(d) *Data requirements for incorporating improved data.* Requests for revisions based on the use of improved hydrologic, hydraulic, or topographic data shall include the following data:

(1) Data that are believed to be better than those used in the original analysis (such as additional years of stream gage data).

(2) Documentation of the source of the data.

(3) Explanation as to why the use of the new data will improve the results of the original analysis.

(4) Revised hydrologic analysis where hydrologic data are being incorporated.

(5) Revised hydraulic analysis and flood elevation profiles where new hydrologic or hydraulic data are being incorporated.

(6) Revised delineations of the flood plain boundaries and floodway where new hydrologic, hydraulic, or topographic data are being incorporated.

(e) *Data requirements for incorporating improved methods.* Requests for revisions based on the use of improved hydrologic or hydraulic methodology shall include the following data:

(1) New hydrologic analysis when an alternative hydrologic methodology is being proposed.

(2) New hydraulic analysis and flood elevation profiles when an alternative hyrologic or hydraulic methodology is being proposed.

(3) Explanation as to why the alternative methodologies are superior to the original methodologies.

(4) Revised delineations of the flood plain boundaries and floodway based on the new analysis(es).

(f) *Certification requirements.* All analysis and data submitted by the requester shall be certified by a registered professional engineer or licensed land surveyor, as appropriate, subject to the definition of "certification" given at § 65.2 of this subchapter.

(g) *Submission procedures.* All requests shall be submitted to the appropriate FEMA Regional Office servicing the community's geographic area.

[51 FR 30314, Aug. 25, 1986, as amended at 53 FR 16279, May 6, 1988]

§ 65.7 Floodway revisions.

(a) *General.* Floodway data is developed as part of FEMA Flood Insurance Studies and is utilized by communities to select and adopt floodways as part of the flood plain management program required by § 60.3 of this subchapter. When it has been determined by a community that no practicable alternatives exist to revising the boundaries of its previously adopted floodway, the procedures below shall be followed.

(b) *Data requirements when base flood elevation changes are requested.* When a floodway revision is requested in association with a change to base flood elevations, the data requirements of § 65.6 shall also be applicable. In addition, the following documentation shall be submitted:

(1) Copy of a public notice distributed by the community stating the community's intent to revise the floodway or a statement by the community that it has notified all affected property owners and affected adjacent jurisdictions.

(2) Copy of a letter notifying the appropriate State agency of the floodway revision when the State has juris-

diction over the floodway or its adoption by communities participating in the NFIP.

(3) Documentation of the approval of the revised floodway by the appropriate State agency (for communities where the State has jurisdiction over the floodway or its adoption by communities participating in the NFIP).

(4) Engineering analysis for the revised floodway, as described below:

(i) The floodway analysis must be performed using the hydraulic computer model used to determine the proposed base flood elevations.

(ii) The floodway limits must be set so that neither the effective base flood elevations nor the proposed base flood elevations if less than the effective base flood elevations, are increased by more than the amount specified under § 60.3 (d)(2). Copies of the input and output data from the original and modified computer models must be submitted.

(5) Delineation of the revised floodway on the same topographic map used for the delineation of the revised flood boundaries.

(c) *Data requirements for changes not associated with base flood elevation changes.* The following data shall be submitted:

(1) Items described in paragraphs (b) (1) through (3) of this section must be submitted.

(2) Engineering analysis for the revised floodway, as described below:

(i) The original hydraulic computer model used to develop the established base flood elevations must be modified to include all encroachments that have occurred in the flood plain since the existing floodway was developed. If the original hydraulic computer model is not available, an alternate hydraulic computer model may be used provided the alternate model has been calibrated so as to reproduce the original water surface profile of the original hydraulic computer model. The alternate model must be then modified to include all encroachments that have occurred since the existing floodway was developed.

(ii) The floodway analysis must be performed with the modified computer model using the desired floodway limits.

(iii) The floodway limits must be set so that combined effects of the past encroachments and the new floodway limits do not increase the effective base flood elevations by more than the amount specified in § 60.3(d)(2). Copies of the input and output data from the original and modified computer models must be submitted.

(3) Delineation of the revised floodway on a copy of the effective NFIP map and a suitable topographic map.

(d) *Certification requirements.* All analyses submitted shall be certified by a registered professional engineer. All topographic data shall be certified by a registered professional engineer or licensed land surveyor. Certifications are subject to the definition given at § 65.2 of this subchapter.

(e) *Submission procedures.* All requests that involve changes to floodways shall be submitted to the appropriate FEMA Regional Office servicing the community's geographic area.

[51 FR 30315, Aug. 25, 1986]

§ 65.8 Review of proposed projects.

A community, or individual through the community, wishing FEMA's comments on whether a proposed project, if built as proposed, would justify a map revision may request a Conditional Letter of Map Amendment or Revision in accordance with Part 72 of this subchapter. The data required to support such requests are the same as those required to support requests for revisions in accordance with §§ 65.5, 65.6, and 65.7, except as-built certification is not required.

[51 FR 30315, Aug. 25, 1986]

§ 65.9 Review and response by the Administrator.

If any questions or problems arise during review, FEMA will consult the Chief Executive Officer of the community (CEO), the community official designated by the CEO, and/or the requester for resolution. Upon receipt of a revision request, the Administrator shall mail an acknowledgment of receipt of such request to the CEO. Within 90 days of receiving the request with all necessary information the Administrator shall notify the CEO of one or more of the following:

(a) The effective map(s) shall not be modified;

(b) The base flood elevations on the effective FIRM shall be modified and new base flood elevations shall be established under the provisions of Part 67 of this subchapter;

(c) The changes requested are approved and the map(s) amended by Letter of Map Revision (LOMR);

(d) The changes requested are approved and a revised map(s) will be printed and distributed;

(e) The changes requested are not of such a significant nature as to warrant a reissuance or revision of the flood insurance study or maps and will be deferred until such time as a significant change occurs;

(f) An additional 90 days is required to evaluate the scientific or technical data submitted; or

(g) Additional data are required to support the revision request.

[51 FR 30315, Aug. 25, 1986]

§ 65.10 Mapping of areas protected by levee systems.

(a) *General.* For purposes of the NFIP, FEMA will only recognize in its flood hazard and risk mapping effort those levee systems that meet, and continue to meet, minimum design, operation, and maintenance standards that are consistent with the level of protection sought through the comprehensive flood plain management criteria established by § 60.3 of this subchapter. Accordingly, this section describes the types of information FEMA needs to recognize, on NFIP maps, that a levee system provides protection from the base flood. This information must be supplied to FEMA by the community or other party seeking recognition of such a levee system at the time a flood risk study or restudy is conducted, when a map revision under the provisions of Part 65 of this subchapter is sought based on a levee system, and upon request by the Administrator during the review of previously recognized structures. The FEMA review will be for the sole purpose of establishing appropriate risk zone determinations for NFIP maps and shall not constitute a determination by FEMA as to how a structure or system will perform in a flood event.

(b) *Design criteria.* For levees to be recognized by FEMA, evidence that adequate design and operation and maintenance systems are in place to provide reasonable assurance that protection from the base flood exists must be provided. The following requirements must be met:

(1) *Freeboard.* (i) Riverine levees must provide a minimum freeboard of three feet above the water-surface level of the base flood. An additional one foot above the minimum is required within 100 feet in either side of structures (such as bridges) riverward of the levee or wherever the flow is constricted. An additional one-half foot above the minimum at the upstream end of the levee, tapering to not less than the minimum at the downstream end of the levee, is also required.

(ii) Occasionally, exceptions to the minimum riverine freeboard requirement described in paragraph (b)(1)(i) of this section, may be approved. Appropriate engineering analyses demonstrating adequate protection with a lesser freeboard must be submitted to support a request for such an exception. The material presented must evaluate the uncertainty in the estimated base flood elevation profile and include, but not necessarily be limited to an assessment of statistical confidence limits of the 100-year discharge; changes in stage-discharge relationships; and the sources, potential, and magnitude of debris, sediment, and ice accumulation. It must be also shown that the levee will remain structurally stable during the base flood when such additional loading considerations are imposed. Under no circumstances will freeboard of less than two feet be accepted.

(iii) For coastal levees, the freeboard must be established at one foot above the height of the one percent wave or the maximum wave runup (whichever is greater) associated with the 100-year stillwater surge elevation at the site.

(iv) Occasionally, exceptions to the minimum coastal levee freeboard requirement described in paragraph (b)(1)(iii) of this section, may be approved. Appropriate engineering analyses demonstrating adequate protection with a lesser freeboard must be submitted to support a request for such an exception. The material presented must evaluate the uncertainty in the estimated base flood loading conditions. Particular emphasis must be placed on the effects of wave attack and overtopping on the stability of the levee. Under no circumstances, however, will a freeboard of less than two feet above the 100-year stillwater surge elevation be accepted.

(2) *Closures.* All openings must be provided with closure devices that are structural parts of the system during operation and design according to sound engineering practice.

(3) *Embankment protection.* Engineering analyses must be submitted that demonstrate that no appreciable erosion of the levee embankment can be expected during the base flood, as a result of either currents or waves, and that anticipated erosion will not result in failure of the levee embankment or foundation directly or indirectly through reduction of the seepage path and subsequent instability. The factors to be addressed in such analyses include, but are not limited to: Expected flow velocities (especially in constricted areas); expected wind and wave action; ice loading; impact of debris; slope protection techniques; duration of flooding at various stages and velocities; embankment and foundation materials; levee alignment, bends, and transitions; and levee side slopes.

(4) *Embankment and foundation stability.* Engineering analyses that evaluate levee embankment stability must be submitted. The analyses provided shall evaluate expected seepage during loading conditions associated with the base flood and shall demonstrate that seepage into or through the levee foundation and embankment will not jeopardize embankment or foundation stability. An alternative analysis demonstrating that the levee is designed and constructed for stability against loading conditions for Case IV as defined in the U.S. Army Corps of Engineers (COE) manual, "Design and Construction of Levees" (EM 1110-2-1913, Chapter 6, Section II), may be used. The factors that shall be addressed in the analyses include: Depth of flooding, duration of flooding, embankment geometry and length of seepage path at critical locations, embankment and foundation materials, embankment compaction, penetrations, other design factors affecting seepage (such as drainage layers), and other design factors affecting embankment and foundation stability (such as berms).

(5) *Settlement.* Engineering analyses must be submitted that assess the potential and magnitude of future losses of freeboard as a result of levee settlement and demonstrate that freeboard will be maintained within the minimum standards set forth in paragraph (b)(1) of this section. This analysis must address embankment loads, compressibility of embankment soils, compressibility of foundation soils, age of the levee system, and construction compaction methods. In addition, detailed settlement analysis using procedures such as those described in the COE manual, "Soil Mechanics Design—Settlement Analysis" (EM 1100-2-1904) must be submitted.

(6) *Interior drainage.* An analysis must be submitted that identifies the source(s) of such flooding, the extent of the flooded area, and, if the average depth is greater than one foot, the water-surface elevation(s) of the base flood. This analysis must be based on the joint probability of interior and exterior flooding and the capacity of facilities (such as drainage lines and pumps) for evacuating interior floodwaters.

(7) *Other design criteria.* In unique situations, such as those where the levee system has relatively high vulnerability, FEMA may require that other design criteria and analyses be submitted to show that the levees provide adequate protection. In such situations, sound engineering practice will be the standard on which FEMA will base its determinations. FEMA will also provide the rationale for requiring this additional information.

(c) *Operation plans and criteria.* For a levee system to be recognized, the operational criteria must be as described below. All closure devices or mechanical systems for internal drainage, whether manual or automatic, must be operated in accordance with an officially adopted operation manual, a copy of which must be provided to FEMA by the operator when levee or drainage system recognition is being sought or when the manual for a previously recognized system is revised in any manner. All operations must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP.

(1) *Closures.* Operation plans for closures must include the following:

(i) Documentation of the flood warning system, under the jurisdiction of Federal, State, or community officials, that will be used to trigger emergency operation activities and demonstration that sufficient flood warning time exists for the completed operation of all closure structures, including necessary sealing, before floodwaters reach the base of the closure.

(ii) A formal plan of operation including specific actions and assignments of responsibility by individual name or title.

(iii) Provisions for periodic operation, at not less than one-year intervals, of the closure structure for testing and training purposes.

(2) *Interior drainage systems.* Interior drainage systems associated with levee systems usually include storage areas, gravity outlets, pumping stations, or a combination thereof. These drainage systems will be recognized by FEMA on NFIP maps for flood protection purposes only if the following minimum criteria are included in the operation plan:

(i) Documentation of the flood warning system, under the jurisdiction of Federal, State, or community officials, that will be used to trigger emergency operation activities and demonstration that sufficient flood warning time exists to permit activation of mechanized portions of the drainage system.

(ii) A formal plan of operation including specific actions and assignments of responsibility by individual name or title.

(iii) Provision for manual backup for the activation of automatic systems.

(iv) Provisions for periodic inspection of interior drainage systems and periodic operation of any mechanized portions for testing and training purposes. No more than one year shall elapse between either the inspections or the operations.

(3) *Other operation plans and criteria.* Other operating plans and criteria may be required by FEMA to ensure that adequate protection is provided in specific situations. In such cases, sound emergency management practice will be the standard upon which FEMA determinations will be based.

(d) *Maintenance plans and criteria.* For levee systems to be recognized as providing protection from the base flood, the maintenance criteria must be as described herein. Levee systems must be maintained in accordance with an officially adopted maintenance plan, and a copy of this plan must be provided to FEMA by the owner of the levee system when recognition is being sought or when the plan for a previously recognized system is revised in any manner. All maintenance activities must be under the jurisdiction of a Federal or State agency, an agency created by Federal or State law, or an agency of a community participating in the NFIP that must assume ultimate responsibility for maintenance. This plan must document the formal procedure that ensures that the stability, height, and overall integrity of the levee and its associated structures and systems are maintained. At a minimum, maintenance plans shall specify the maintenance activities to be performed, the frequency of their performance, and the person by name or title responsible for their performance.

(e) *Certification requirements.* Data submitted to support that a given levee system complies with the structural requirements set forth in paragraphs (b)(1) through (7) of this section must be certified by a registered professional engineer. Also, certified as-built plans of the levee must be submitted. Certifications are subject to the definition given at § 65.2 of this subchapter. In lieu of these structural requirements, a Federal agency with responsibility for levee design may certify that the levee has been adequately designed and constructed to provide protection against the base flood.

[51 FR 30316, Aug. 25, 1986]

§ 65.11 Evaluation of sand dunes in mapping coastal flood hazard areas.

(a) *General conditions.* For purposes of the NFIP, FEMA will consider storm-induced dune erosion potential in its determination of coastal flood hazards and risk mapping efforts. The criterion to be used in the evaluation of dune erosion will apply to primary frontal dunes as defined in § 59.1, but does not apply to artificially designed and constructed dunes that are not well-established with long-standing vegetative cover, such as the placement of sand materials in a dune-like formation.

(b) *Evaluation criterion.* Primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune, as measured perpendicular to the shoreline and above the 100-year stillwater flood elevation and seaward of the dune crest, is equal to, or less than, 540 square feet.

(c) *Exceptions.* Exceptions to the evaluation criterion may be granted where it can be demonstrated through authoritative historical documentation that the primary frontal dunes at a specific site withstood previous base flood storm surges and associated wave action.

[53 FR 16279, May 6, 1988]

§ 65.12 Revision of flood insurance rate maps to reflect base flood elevations caused by proposed encroachments.

(a) When a community proposes to permit encroachments upon the flood plain when a regulatory floodway has not been adopted or to permit encroachments upon an adopted regulatory floodway which will cause base flood elevation increases in excess of those permitted under paragraphs (c)(10) or (d)(3) of § 60.3 of this subchapter, the community shall apply to the Administrator for conditional approval of such action prior to permitting the encroachments to occur and shall submit the following as part of its application:

(1) A request for conditional approval of map change and the appropriate initial fee as specified by § 72.3 of this subchapter or a request for exemption from fees as specified by § 72.5 of this subchapter, whichever is appropriate;

(2) An evaluation of alternatives which would not result in a base flood elevation increase above that permitted under paragraphs (c)(10) or (d)(3) of § 60.3 of this subchapter demonstrating why these alternatives are not feasible;

(3) Documentation of individual legal notice to all impacted property owners within and outside of the community, explaining the impact of the proposed action on their property.

(4) Concurrence of the Chief Executive Officer of any other communities impacted by the proposed actions;

(5) Certification that no structures are located in areas which would be impacted by the increased base flood elevation;

(6) A request for revision of base flood elevation determination according to the provisions of § 65.6 of this part;

(7) A request for floodway revision in accordance with the provisions of § 65.7 of this part;

(b) Upon receipt of the Administrator's conditional approval of map change and prior to approving the proposed encroachments, a community shall provide evidence to the Administrator of the adoption of flood plain management ordinances incorporating the increased base flood elevations and/or revised floodway reflecting the post-project condition.

(c) Upon completion of the proposed encroachments, a community shall provide as-built certifications in accordance with the provisions of § 65.3 of this part. The Administrator will initiate a final map revision upon receipt of such certifications in accordance with Part 67 of this subchapter.

[53 FR 16279, May 6, 1988]

§ 65.13 List of communities submitting new technical data.

This section provides a cumulative list of communities where modifications of the base flood elevation determinations have been made because of submission of new scientific or technical data. Due to the need for expediting the modifications, the revised map is already in effect and the appeal period commences on or about the effective date of the modified map. An interim rule, followed by a final rule, will list the revised map effective date, local repository and the name and address of the Chief Executive Officer of the community. The map(s) is (are) effective for both flood plain management and insurance purposes.

[51 FR 30317, Aug. 25, 1986. Redesignated at 53 FR 16279, May 6, 1988]

Editorial Note: For a list of communities issued under this section and not carried in the CFR, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

PART 66—CONSULTATION WITH LOCAL OFFICIALS

Sec.
66.1 Purpose of part.
66.2 Definitions.
66.3 Establishment of community case file and flood elevation study docket.
66.4 Appointment of consultation coordination officer.
66.5 Responsibilities for consultation and coordination.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 66.1 Purpose of part.

(a) The purpose of this part is to comply with section 206 of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4107) by establishing procedures for flood elevation determinations of Zones A1-30, AE, AH, AO and V1-30, and VE within the community so that adequate consultation with the community officials shall be assured.

(b) The procedures in this part shall apply when base flood elevations are to be determined or modified.

(c) The Administrator or his delegate shall:

(1) Specifically request that the community submit pertinent data concerning flood hazards, flooding experience, plans to avoid potential hazards, estimate of historical and prospective economic impact on the community, and such other appropriate data (particularly if such data will necessitate a modification of a base flood elevation).

(2) Notify local officials of the progress of surveys, studies, investigations, and of prospective findings, along with data and methods employed in reaching such conclusions; and

(3) Encourage local dissemination of surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the community and to the Administrator.

(4) Carry out the responsibilities for consultation and coordination set forth in § 66.5 of this part.

[41 FR 46988, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 47 FR 771, Jan. 7, 1982; 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985]

§ 66.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

[41 FR 46988, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 66.3 Establishment of community case file and flood elevation study docket.

(a) A file shall be established for each community at the time initial consideration is given to studying that community in order to establish whether or not it contains flood-prone areas. Thereafter, the file shall include copies of all correspondence with officials in that community. As the community is tentatively identified, provided with base flood elevations, or suspended and reinstated, documentation of such actions by the Administrator shall be placed in the community file. Even if a map is administratively rescinded or withdrawn after notice under Part 65 of this subchapter or the community successfully rebuts its flood-prone designation, the file will be maintained indefinitely.

(b) A portion of the community file shall be designated a flood elevation study consultation docket and shall be established for each community at the time the contract is awarded for a flood elevation study. The docket shall include copies of (1) all correspondence between the Administrator and the community concerning the study, reports of any meetings among the Agency representatives, property owners of the community, the state coordinating agency, study contractors or other interested persons, (2) relevant publications, (3) a copy of the completed flood elevation study, and (4) a copy of the Administrator's final determination.

(c) A flood elevation determination docket shall be established and maintained in accordance with Part 67 of this subchapter.

[41 FR 46988, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 66.4 Appointment of consultation coordination officer.

The Administrator may appoint an employee of the Federal Emergency Management Agency, or other designated Federal employee, as the Consultation Coordination Officer, for each community when an analysis is undertaken to establish or to modify flood elevations pursuant to a new study or a restudy. When a CCO is appointed by the Administrator, the responsibilities for consultation and coordination as set forth in § 66.5 shall be carried out by the CCO. The Administrator shall advise the community and the state coordinating agency, in writing, of this appointment.

[47 FR 771, Jan. 7, 1982, as amended at 49 FR 4751, Feb. 8, 1984]

§ 66.5 Responsibilities for consultation and coordination.

(a) Contact shall be made with appropriate officials of a community in which a proposed investigation is undertaken, and with the state coordinating agency.

(b) Local dissemination of the intent and nature of the investigation shall be encouraged so that interested parties will have an opportunity to bring relevant data to the attention of the community and to the Administrator.

(c) Submission of information from the community concerning the study shall be encouraged.

(d) Appropriate officials of the community shall be fully informed of (1) The responsibilities placed on them by the Program, (2) the administrative procedures followed by the Federal Emergency Management Agency, (3) the community's role in establishing elevations, and (4) the responsibilities of the community if it participates or continues to participate in the Program.

(e) Before the commencement of an initial Flood Insurance Study, the CCO or other FEMA representative, together with a representative of the organization undertaking the study, shall meet with officials of the community. The state coordinating agency shall be notified of this meeting and may attend. At this meeting, the local officials shall be informed of (1) The date when the study will commence, (2) the nature and purpose of the study, (3) areas involved, (4) the manner in which the study shall be undertaken, (5) the general principles to be applied, and (6) the intended use of the data obtained. The community shall be informed in writing if any of the six preceding items are or will be changed after this initial meeting and during the course of the ongoing study.

(f) The community shall be informed in writing of any intended modification to the community's final flood elevation determinations or the development of new elevations in additional areas of the community as a result of a new study or restudy. Such information to the community will include the data set forth in paragraph (e) of this section. At the discretion of the Chief of the Natural and Technological Hazards Division in each FEMA Regional Office, a meeting may be held to accomplish this requirement.

[47 FR 771, Jan. 7, 1982, as amended at 49 FR 4751, Feb. 8, 1984]

PART 67—APPEALS FROM PROPOSED FLOOD ELEVATION DETERMINATIONS

Sec.

67.1 Purpose of part.
67.2 Definitions.

Sec.
67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).
67.4 Proposed flood elevation determination.
67.5 Right of appeal.
67.6 Basis of appeal.
67.7 Collection of appeal data.
67.8 Appeal procedure.
67.9 Final determination in the absence of an appeal by the community.
67.10 Rates during pendency of final determination.
67.11 Notice of final determination.
67.12 Appeal to District Court.

AUTHORITY: 42 U.S.C. 4001 et seq. Reorganization Plan No. 3 of 1978, E.O. 12127.

SOURCE: 41 FR 46989, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 67.1 Purpose of part.

The purpose of this part is to establish procedures implementing the provisions of section 110 of Flood Disaster Protection Act of 1973.

§ 67.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 67.3 Establishment and maintenance of a flood elevation determination docket (FEDD).

The Administrator shall establish a docket of all matters pertaining to flood elevation determinations. The docket files shall contain the following information:

(a) The name of the community subject to the flood elevation determination;

(b) A copy of the notice of the proposed flood elevation determination to the Chief Executive Officer (CEO) of the Community;

(c) A copy of the notice of the proposed flood elevation determination published in a prominent local newspaper of the community;

(d) A copy of the notice of the proposed flood elevation determination published in the FEDERAL REGISTER;

(e) Copies of all appeals by private persons received by the Administrator from the CEO;

(f) Copies of all comments received by the Administrator on the notice of the proposed flood elevation determination published in the FEDERAL REGISTER.

(g) A copy of the community's appeal or a copy of its decision not to appeal the proposed flood elevation determination;

(h) A copy of the flood insurance study for the community;

(i) A copy of the FIRM for the community;

(j) Copies of all materials maintained in the flood elevation study consultation docket; and

(k) A copy of the final determination with supporting documents.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.4 Proposed flood elevation determination.

The Administrator shall propose flood elevation determinations in the following manner:

(a) Publication of the proposed flood elevation determination for comment in the FEDERAL REGISTER;

(b) Notification by certified mail, return receipt requested, of the proposed flood elevation determination to the CEO; and

(c) Publication of the proposed flood elevation determination in a prominent local newspaper at least twice during the ten day period immediately following the notification of the CEO.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.5 Right of appeal.

(a) Any owner or lessee of real property, within a community where a proposed flood elevation determination has been made pursuant to section 1363 of the National Flood Insurance Act of 1968, as amended, who believes his property rights to be adversely affected by the Administrator's proposed determination, may file a written appeal of such determination with the CEO, or such agency as he shall publicly designate, within ninety days of the second newspaper publication of the Administrator's proposed determination.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.6 Basis of appeal.

(a) The sole basis of appeal under this part shall be the possession of knowledge or information indicating that the elevations proposed by FEMA are scientifically or technically incorrect. Because scientific and technical correctness is often a matter of degree rather than absolute (except where mathematical or measurement error or changed physical conditions can be demonstrated), appellants are required to demonstrate that alternative methods or applications result in more correct estimates of base flood elevations, thus demonstrating that FEMA's estimates are incorrect.

(b) *Data requirements.* (1) If an appellant believes the proposed base flood elevations are technically incorrect due to a mathematical or measurement error or changed physical conditions, then the specific source of the error must be identified. Supporting data must be furnished to FEMA including certifications by a registered professional engineer or licensed land surveyor, of the new data necessary for FEMA to conduct a reanalysis.

(2) If an appellant believes that the proposed base flood elevations are technically incorrect due to error in application of hydrologic, hydraulic or other methods or use of inferior data in applying such methods, the appeal must demonstrate technical incorrectness by:

(i) Identifying the purported error in the application or the inferior data.

(ii) Supporting why the application is incorrect or data is inferior.

(iii) Providing an application of the same basic methods utilized by FEMA but with the changes itemized.

(iv) Providing background technical support for the changes indicating why the appellant's application should be accepted as more correct.

(v) Providing certification of correctness of any alternate data utilized or measurements made (such as topographic information) by a registered professional engineer or licensed land surveyor, and

(vi) Providing documentation of all locations where the appellant's base flood elevations are different from FEMA's.

(3) If any appellant believes the proposed base flood elevations are scientifically incorrect, the appeal must demonstrate scientific incorrectness by:

(i) Identifying the methods, or assumptions purported to be scientifically incorrect.

(ii) Supporting why the methods, or assumptions are scientifically incorrect.

(iii) Providing an alternative analysis utilizing methods, or assumptions purported to be correct.

(iv) Providing technical support indicating why the appellant's methods should be accepted as more correct and

(v) Providing documentation of all locations where the appellant's base flood elevations are different from FEMA's.

[48 FR 31644, July 1, 1983]

§ 67.7 Collection of appeal data.

(a) Appeals by private persons to the CEO shall be submitted within ninety (90) days following the second newspaper publication of the Administrator's proposed flood elevation determination to the CEO or to such agency as he may publicly designate and shall set forth scientific or technical data that tend to negate or contradict the Administrator's findings.

(b) Copies of all individual appeals received by the CEO shall be forwarded, as soon as they are received, to the Administrator for information and placement in the Flood Elevation Determination Docket.

(c) The CEO shall review and consolidate all appeals by private persons and issue a written opinion stating whether the evidence presented is sufficient to justify an appeal on behalf of such persons by the community in its own name.

(d) The decision issued by the CEO on the basis of his review, on whether an appeal by the community in its own name shall be made, shall be filed with the Administrator not later than ninety days after the date of the second newspaper publication of the Administrator's proposed flood elevation determination and shall be placed in the FEDD.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.8 Appeal procedure.

(a) If a community appeals the proposed flood elevation determination, the Administrator shall review and take fully into account any technical or scientific data submitted by the community that tend to negate or contradict the information upon which his/her proposed determination is based.

(b) The Administrator shall resolve such appeal by consultation with officials of the local government, or by administrative hearings under the procedures set forth in Part 68 of this subchapter, or by submission of the conflicting data to an independent scientific body or appropriate Federal agency for advice.

(c) The final determination by the Administrator where an appeal is filed shall be made within a reasonable time.

(d) Nothing in this section shall be considered to compromise an appellant's rights granted under § 67.12.

(e) The Administrator shall make available for public inspection the reports and other information used in making the final determination. This material shall be admissible in a court of law in the event the community seeks judicial review in accordance with § 67.12.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.9 Final determination in the absence of an appeal by the community.

(a) If the Administrator does not receive an appeal from the community within the ninety days provided, he shall consolidate and review on their own merits the individual appeals which, in accordance with § 67.7 are filed within the community and forwarded by the CEO.

(b) The final determination shall be made pursuant to the procedures in § 67.8 and, modifications shall be made of his proposed determination as may be appropriate, taking into account the written opinion, if any, issued by the community in not supporting such appeals.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 67.10 Rates during pendency of final determination.

(a) Until such time as a final determination is made and proper notice is given, no person within a participating community shall be denied the right to purchase flood insurance at the subsidized rate.

(b) After the final determination and upon the effective date of a FIRM, risk premium rates will be charged for new construction and substantial improvements. The effective date of a FIRM shall begin not later than six months after the final flood elevation determination.

§ 67.11 Notice of final determination.

The Administrator's notice of the final flood elevation determination for a community shall be in written form and published in the FEDERAL REGISTER, and copies shall be sent to the CEO, all individual appellants and the State Coordinating Agency.

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

EDITORIAL NOTE: For the list of communities issued under this section, and not carried in the CFR, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

§ 67.12 Appeal to District Court.

(a) An appellant aggrieved by the final determination of the Administrator may appeal such determination only to the United States District Court for the District within which the community is located within sixty days after receipt of notice of determination.

(b) During the pendency of any such litigation, all final determinations of the Administrator shall be effective for the purposes of this title unless stayed by the court for good cause shown.

(c) The scope of review of the appellate court shall be in accordance with the provisions of 5 U.S.C. 706, as modified by 42 U.S.C. 4104(b).

[41 FR 46989, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 33879, Aug. 27, 1984]

PART 68—ADMINISTRATIVE HEARING PROCEDURES

Sec.

68.1 Purpose of part.
68.2 Definitions.
68.3 Right to administrative hearings.
68.4 Hearing board.
68.5 Establishment of a docket.
68.6 Time and place of hearing.
68.7 Conduct of hearings.
68.8 Scope of review.
68.9 Admissible evidence.
68.10 Burden of proof.
68.11 Determination.
68.12 Relief.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 47 FR 23449, May 29, 1982, unless otherwise noted.

§ 68.1 Purpose of part.

The purpose of this part is to establish procedures for appeals of the Administrator's base flood elevation determinations, whether proposed pursuant to section 1363(e) of the Act (42 U.S.C. 4104) or modified because of changed conditions or newly acquired scientific and technical information.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33379, Aug. 27, 1984]

§ 68.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.3 Right to administrative hearings.

If a community appeals the Administrator's flood elevation determination established pursuant to § 67.8 of this subchapter, and the Administrator has determined that such appeal cannot be resolved by consultation with officials of the community or by submitting the conflicting data to an independent scientific body or appropriate Federal agency for advice, the Administrator shall hold an administrative hearing to resolve the appeal.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.4 Hearing board.

(a) Each hearing shall be conducted by a three member hearing board (hereinafter "board"). The board shall consist of a hearing officer (hereinafter "Judge") appointed by the Director based upon a recommendation by the Office of Personnel Management and two members selected by the Judge who are qualified in the technical field of flood elevation determinations. The Judge shall consult with anyone he deems appropriate to determine the technical qualifications of individuals being considered for appointment to the board. The board members shall not be FEMA employees.

(b) The Judge shall be responsible for conducting the hearing, and shall make all procedural rulings during the course of the hearing. Any formal orders and the final decision on the merits of the hearing shall be made by a majority of the board. A dissenting member may submit a separate opinion for the record.

(c) A technically qualified alternate will be appointed by the Judge as a member of the board when a technically qualified appointed member becomes unavailable. The Director will appoint an alternate Judge if the appointed Judge becomes unavailable.

§ 68.5 Establishment of a docket.

The General Counsel shall establish a docket for appeals referred to him/her by the Administrator for administrative hearings. This docket shall include, for each appeal, copies of all materials contained in the flood elevation determination docket (FEDD) file on the matter, copies of all correspondence in connection with the appeal, all motions, orders, statements, and other legal documents, a transcript of the hearing, and the board's final determination.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.6 Time and place of hearing.

(a) The time and place of each hearing shall be designated by the Judge for that hearing. The Administrator and the General Counsel shall be promptly advised of such designations.

(b) The board's notice of the time and place of hearing shall be sent by the Flood Insurance Docket Clerk by registered or certified mail, return receipt requested, to all appellants. Such notice shall include a statement indicating the nature of the proceedings and their purpose and all appellants' entitlement to counsel. Notice of the hearing shall be sent no later than 30 days before the date of hearing unless such period is waived by all appellants.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.7 Conduct of hearings.

(a) The Judge shall be responsible for the fair and expeditious conduct of proceedings.

(b) The Administrator shall be represented by the General Counsel or his/her designee.

(c) One administrative hearing shall be held for any one community unless the Administrator for good cause shown grants a separate hearing or hearings.

(d) The Chief Executive Officer (CEO) of the community or his/her designee shall represent all appellants from that community; *Provided*, That any appellant may petition the board to allow such appellant to make an appearance on his/her own behalf. Such a petition shall be granted only upon a showing of good cause.

(e) Hearings shall be open to the public.

(f) A verbatim transcript will be made of the hearing. An appellant may order copies of the transcribed verbatim record directly from the reporter and will be responsible for payments.

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.8 Scope of review.

Review at administrative hearings shall be limited to: An examination of any information presented by each appellant within the 90 day appeal period indicating that elevations proposed by the Administrator are scientifically or technically incorrect; the FIRM; the flood insurance study; its backup data and the references used in development of the flood insurance study; and responses by FEMA to the issues raised by the appellant(s).

[47 FR 23449, May 29, 1982, as amended at 49 FR 33879, Aug. 27, 1984]

§ 68.9 Admissible evidence.

(a) Legal rules of evidence shall not be in effect at adminstrative hearings. However, *only* evidence relevant to issues within the scope of review under § 68.8 shall be admissible.

(b) Documentary and oral evidence shall be admissible.

(c) Admissibility of non-expert testimony shall be within the discretion of the board.

(d) All testimony shall be under oath.

(e) *Res judicata*/collateral estoppel. Where there has been a previous determination, decision or finding of fact by the Director, one of his delegees, an administrative law judge, hearing officer, or hearing board regarding the base flood elevations of any other community, such determination, decision, or finding of fact shall not be binding on the board and may only be admissible into evidence if relevant.

§ 68.10 Burden of proof.

The burden shall be on appellant(s) to prove that the flood elevation determination is not scientifically or technically correct.

§ 68.11 Determination.

The board shall render its written decision within 45 days after the conclusion of the hearing. The entire record of the hearing including the board's decision will be sent to the Director for review and approval. The Director shall make the final base flood elevation determination by accepting in whole or in part or by rejecting the board's decision.

§ 68.12 Relief.

The final determination may be appealed by the appellant(s) to the United States district court as provided in section 1363(f) of the Act (42 U.S.C. 4104).

PART 69—[RESERVED]

PART 70—PROCEDURE FOR MAP CORRECTION

MAPPING DEFICIENCIES UNRELATED TO COMMUNITY-WIDE ELEVATION DETERMINATIONS

Sec.
70.1 Purpose of part.
70.2 Definitions.
70.3 Right to submit technical information.
70.4 Review by the Administrator.
70.5 Letter of Map Amendment.
70.6 Distribution of Letter of Map Amendment.
70.7 Notice of Letter of Map Amendment.
70.8 Premium refund after Letter of Map Amendment.
70.9 Review of proposed projects.

AUTHORITY: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

MAPPING DEFICIENCIES UNRELATED TO COMMUNITY-WIDE ELEVATION DETERMINATIONS

§ 70.1 Purpose of part.

The purpose of this part is to provide an administrative procedure whereby the Administrator will review the scientific or technical submissions of an owner or lessee of property who believes his property has been inadvertently included in designated A, A0, A1-30, AE, AH, A99, V0, V1-30, VE, and V Zones, as a result of the transposition of the curvilinear line to either street or to other readily identifiable features. The necessity for this part is due in part to the technical difficulty of accurately delineating the curvilinear line on either a FHBM or FIRM. These procedures shall not apply when there has been any alteration of topography since the effective date of the first NFIP map (i.e., FHBM or FIRM) showing the property within an area of special flood hazard. Appeals in such circumstances are subject to the provisions of Part 65 of this subchapter.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985; 51 FR 30317, Aug. 25, 1986]

§ 70.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 70.3 Right to submit technical information.

(a) Any owner or lessee of property (applicant) who believes his property has been inadvertently included in a designated A, A0, A1-30, AE, AH, A99, V0, V1-30, VE, and V Zones on a FHBM or a FIRM, may submit scientific or technical information to the Administrator for his/her review.

(b) Scientific and technical information for the purpose of this part may include, but is not limited to the following:

(1) An actual copy of the recorded plat map bearing the seal of the appropriate recordation official (e.g. County Clerk, or Recorder of Deeds) indicating the official recordation and proper citation (Deed or Plat Book Volume and Page Numbers), or an equivalent identification where annotation of the deed or plat book is not the practice.

(2) A topographical map showing (i) ground elevation contours in relation to the National Geodetic Vertical Datum (NVGD) of 1929, (ii) the total area of the property in question, (iii) the location of the structure or structures located on the property in question, (iv) the elevation of the lowest adjacent grade to a structure or structures and (v) an indication of the curvilinear line which represents the area subject to inundation by a base flood. The curvilinear line should be based upon information provided by any appropriate authoritative source, such as a Federal Agency, the appropriate state agency (e.g. Department of Water Resources), a County Water Control District, a County or City En-

gineer, a Federal Emergency Management Agency Flood Insurance Study, or a determination by a Registered Professional Engineer;

(3) A copy of the FHBM or FIRM indicating the location of the property in question;

(4) A certification by a Registered Professional Engineer or Licensed Land Surveyor that the lowest grade adjacent to the structure is above the base flood elevation.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985; 51 FR 30317, Aug. 25, 1986; 53 FR 16280, May 6, 1988]

§ 70.4 Review by the Administrator.

The Administrator, after reviewing the scientific or technical information submitted under the provisions of § 70.3, shall notify the applicant in writing of his/her determination within 60 days from the date of receipt of the applicant's scientific or technical information that either the ground elevations of an entire legally defined parcel of land or the elevation of the lowest adjacent grade to a structure have been compared with the elevation of the base flood and that:

(a) The property is within a designated A, A0, A1-30, AE, AH, A99, V0, V1-30, VE, or V Zone, and shall set forth the basis of such determination; or

(b) The property should not be included within a designated A, A0, A1-30, AE, AH, A99, V0, V1-30, VE, or V Zone and that the FHBM or FIRM will be modified accordingly; or

(c) An additional 60 days is required to make a determination.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985; 51 FR 30317, Aug. 25, 1986]

§ 70.5 Letter of Map Amendment.

Upon determining from available scientific or technical information that a FHBM or a FIRM requires modification under the provisions of § 70.4(b), the Administrator shall issue a Letter of Map Amendment which shall state:

(a) The name of the Community to which the map to be amended was issued;

(b) The number of the map;

(c) The identification of the property to be excluded from a designated A, A0, A1-30, AE, AH, A99, V0, V1-30, VE, or V Zone.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 50 FR 36028, Sept. 4, 1985]

§ 70.6 Distribution of Letter of Map Amendment.

(a) A copy of the Letter of Map Amendment shall be sent to the applicant who submitted scientific or technical data to the Administrator.

(b) A copy of the Letter of Map Amendment shall be sent to the local map repository with instructions that it be attached to the map which the Letter of Map Amendment is amending.

(c) A copy of the Letter of Map Amendment shall be sent to the map repository in the state with instructions that it be attached to the map which it is amending.

(d) A copy of the Letter of Map Amendment will be sent to any community or governmental unit that requests such Letter of Map Amendment.

(e) [Reserved]

(f) A copy of the Letter of Map Amendment will be maintained by the Agency in its community case file.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544 and 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 70.7 Notice of letter of Map Amendment.

(a) The Administrator, shall not publish a notice in the FEDERAL REGISTER that the FIRM for a particular community has been amended by letter determination pursuant to this part unless such amendment includes alteration or change of base flood elevations established pursuant to Part 67. Where no change of base flood elevations has occurred, the Letter of Map Amendment provided under §§ 70.5 and 70.6 serves to inform the parties affected.

Editorial Note: For a list of communities issued under this section and not carried in the CFR see the List of CFR Sections Affected appearing in the Finding Aids Section of this volume.

§ 70.8 Premium refund after Letter of Map Amendment.

A Standard Flood Insurance Policyholder whose property has become the subject of a Letter of Map Amendment under this part may cancel the policy within the current policy year and receive a premium refund under the conditions set forth in § 62.5 of this subchapter.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979]

§ 70.9 Review of proposed projects.

An individual who is proposing to build on that portion of a property that may be inadvertently included in an area of special flood hazard may request a Conditional Letter of Map Amendment in accordance with Part 72 of this subchapter. The data required to support such requests are the same as those required to support requests for final Letters of Map Amendment in accordance with § 70.3, except as-built certification is not required.

[51 FR 30318, Aug. 25, 1986]

PART 71—IMPLEMENTATION OF COASTAL BARRIER RESOURCES ACT

Sec.
71.1 Purpose of part.
71.2 Definitions.
71.3 Denial of flood insurance.
71.4 Documentation.
71.5 Violations.

Authority: Sec. 1306, 82 Stat. 575 (42 U.S.C. 4013). Reorganization Plan No. 3 of 1978 (43 FR 41943), E.O. 12127, dated March 31, 1979 (44 FR 19367), sec. 11, Pub. L. 97-348.

Source: 48 FR 37039, Aug. 16, 1983, unless otherwise noted.

§ 71.1 Purpose of part.

This part implements section 11 of the Coastal Barrier Resources Act (Pub. L. 97-348) as that Act amends the National Flood Insurance Act of 1968 (42 U.S.C. 400a *et seq.*).

§ 71.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in Part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part a structure is "new construction" unless it meets the following criteria:

(1)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 18, 1982; and

(ii) The start of construction (see Part 59) took place prior to October 18, 1982; *or*

(2)(i) A legally valid building permit or equivalent documentation was obtained for the construction of such structure prior to October 1, 1983; and

(ii) The structure constituted an insurable building, having walls and a roof permanently in place no later than October 1, 1983.

(c) For the purpose of this part, a structure is a "substantial improvement" if the substantial improvement (see Part 59) of such structure took place on or after October 1, 1983.

(d) For the purpose of this part, "new flood insurance coverage" means a new or renewed policy of flood insurance.

[48 FR 37039, Aug. 16, 1983, as amended at 49 FR 33879, Aug. 27, 1984]

§ 71.3 Denial of flood insurance.

No new flood insurance coverage may be provided on or after October 1, 1983, for any new construction or substantial improvement of a structure located on any coastal barrier within the Coastal Barrier Resources System established by section 4 of the Coastal Barrier Resources Act.

[48 FR 37039, Aug. 16, 1983, as amended at 49 FR 33879, Aug. 27, 1984]

§ 71.4 Documentation.

(a) In order to obtain flood insurance for a structure which is not covered by a policy of flood insurance as of October 1, 1983, the owner of the structure must submit the documentation described in this section in order to show that such structure is eligible to receive flood insurance.

(b) The documentation must be submitted to the Federal Insurance Administration.

(c) Where the start of construction of the structure took place prior to October 18, 1982, the documentation shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 18, 1982;

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statment must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his/her own knowledge or from official community records, that:

(i) The start of construction took place prior to October 18, 1982; and

(ii) The structure has not been substantially improved since September 30, 1983.

(d) Where the start of construction of the structure took place on or after October 18, 1982, but the structure was completed (walls and roof premanently in place) prior to October 1, 1983, the documentations shall consist of:

(1) A legally valid building permit or its equivalent for the construction of the structure dated prior to October 1, 1983;

(i) If the community did not have a building permit system at the time the structure was built, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit;

(ii) If the building permit was lost or destroyed, a written statement to this effect signed by the responsible community official will be accepted in lieu of the building permit. This statement must also include a certification that the official has inspected the structure and found no evidence that the structure was not in compliance with the building code at the time it was built; and

(2) A written statement signed by the community official responsible for building permits, attesting to the fact that he or she knows of his/her own knowledge or from official community records, that:

(i) The structure constituted an insurable building, having walls and a roof permanently in place no later than October 1, 1983; and

(ii) The structure has not been substantially improved since September 30, 1983; and

(3) A community issued final certificate of occupancy or other use permit or equivalent proof certifying the the building was completed (walled and roofed) by October 1, 1983.

(Approved by the Office of Management and Budget under control number 3067-0120)

§ 71.5 Violations.

(a) Any flood insurance policy which has been issued where the terms of this section have not been complied with or is otherwise inconsistent with the provisions of this section, is void *ab initio* and without effect.

(b) Any false statements or false representations of any kind made in connection with the requirements of this part may be punishable by fine or imprisonment under 18 U.S. Code section 1001.

PART 72—PROCEDURE AND FEES FOR OBTAINING CONDITIONAL APPROVAL OF MAP CHANGES

Sec.
72.1 Purpose of part.
72.2 Definitions.
72.3 Initial fee schedule.
72.4 Submittal/payment procedures and FEMA response.
72.5 Exemptions.
72.6 Unfavorable response.
72.7 Resubmittals.

AUTHORITY: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 50 FR 36028, Sept. 4, 1985, unless otherwise noted.

§ 72.1 Purpose of part.

The purpose of this part is to provide administrative and cost recovery procedures for engineering review and processing associated with the issuance of Conditional Letters of Map Amendment (conditional LOMAs) and Conditional Letters of Map Revision (conditional LOMRs). Final LOMAs and LOMRs granted to correct map deficiencies are not subject to this reimbursement procedure.

§ 72.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in Part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a Conditional Letter of Map Amendment (conditional LOMA) is FEMA's comment on a proposed project to be located in and affecting only that portion of the area of special flood hazard outside the regulatory floodway and having no impact on the existing regulatory floodway or effective base flood elevations.

(c) For the purpose of this part, a Conditional Letter of Map Revision (conditional LOMR) will be FEMA's comment on a proposed project that would affect the hydrologic and/or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway or effective base flood elevations.

§ 72.3 Initial fee schedule.

(a) For conditional Letters of Map Amendment, the initial fee shall be paid by the requestor in the following amounts:

(1) Single-lot	$125
(2) Multi-lot/subdivision	$175

(b) For conditional Letters of Map Revision, the initial fee shall be paid by the requestor in the following amounts:

(1) New bridge or culvert (no channelization)	$350
(2) Channel modifications only	$400
(3) Channel modification and new bridge or culvert	$525
(4) Levees, berms, or other structural measures	$675

(c) For projects involving combinations of the above actions which are not separately identified, the initial fee shall be that charged for the most expensive of the actions comprising the combination.

§ 72.4 Submittal/payment procedures and FEMA response.

(a) Initial fees shall be submitted with the request for FEMA review and processing of conditional LOMAs and conditional LOMRs.

(b) Initial fees must be received by FEMA before the review can be initiated for any conditional LOMA or conditional LOMR request.

(c) Following completion of FEMA review for any conditional LOMA or conditional LOMR, the requestor will be billed at the prevailing private sector labor rate (currently $25.00 per hour) for any actual costs exceeding the initial fee incurred during the review.

(1) Requestors of conditional LOMAs will be notified of the anticipated total cost if the total cost of processing their request will exceed $500.

(2) Requestors of conditional LOMRs will be notified of the anticipated total cost if the total cost of processing their request will exceed $1,500.

(3) In the event that processing costs exceed the limits defined in paragraphs (c)(1) and (2) of this section, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

(d) The entity that applies to FEMA through the local community for review will be billed for the cost of the review. The local community incurs no financial obligation under the reimbursement procedure set forth in this part as a result of transmitting the submittal to FEMA.

(e) Payment of both the initial fee and final cost shall be by check or money order payable to the United States Treasury and must be received by FEMA before the conditional LOMA or conditional LOMR will be issued.

(f) For conditional LOMA requests, FEMA shall:

(1) Notify the requestor within 30 days as to the adequacy of the submittal, and

(2) Within 30 days of receipt of adequate information, provide comment to the requestor on the proposed project.

(g) For conditional LOMR requests, FEMA shall:

(1) Notify the requestor within 60 days as to the adequacy of the submittal, and

(2) Within 90 days of receipt of adequate information, provide comment to the requestor on the proposed project.

§ 72.5 Exemptions.

Federal, State, and local governments and their agencies shall be exempt from fees for projects they sponsor if the Administrator determines or the requestor certifies that the particular project is for public benefit and primarily intended for flood loss reduction to existing development in identified flood hazard areas, as opposed to planned flood plain development.

[50 FR 36028, Sept. 4, 1985, as amended at 51 FR 16280, May 6, 1986]

§ 72.6 Unfavorable response.

A conditional LOMA or conditional LOMR may be denied or may contain specific comments, concerns, or conditions regarding a proposed project or design and its impacts on flood hazards in a community. A requestor is not entitled to any refund if the letter contains such comments, concerns, or conditions, or if the letter is denied. A requestor is not entitled to any refund if the requestor is unable to obtain required authorizations, permits, financing, etc., for which the letter was sought.

§ 72.7 Resubmittals.

Any resubmittal of a request more than 90 days after FEMA notification that a request has been denied or after a review has been terminated due to insufficient information or other reasons will be treated as an original submission and subject to all submittal/payment procedures as described in § 72.4, including the initial fee. The procedure of § 72.4 including the initial fee, will also apply if the project has been significantly altered in design or scope other than that necessary to respond to previously issued comments, concerns, or conditions by FEMA.

PART 73—IMPLEMENTATION OF SECTION 1316 OF THE NATIONAL FLOOD INSURANCE ACT OF 1968

Sec.
73.1 Purpose of part.
73.2 Definitions.
73.3 Denial of flood insurance coverage.
73.4 Restoration of flood insurance coverage.

AUTHORITY: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 51 FR 30318, Aug. 25, 1986, unless otherwise noted.

§ 73.1 Purpose of part.

This part implements Section 1316 of the National Flood Insurance Act of 1968.

§ 73.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in Part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part a "duly constituted State or local zoning authority or other authorized public body" means an official or body authorized under State or local law to declare a structure to be in violation of a law, regulation or ordinance.

(c) For the purpose of this part, "State or local laws, regulations or ordinances intended to discourage or restrict development or occupancy of flood-prone areas" are measures such as those defined as "Flood plain management regulations" in § 59.1 of this subchapter. Such measures are referred to in this part as State or local flood plain management regulations.

§ 73.3 Denial of flood insurance coverage.

(a) No new flood insurance shall be provided for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of State or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

(b) New and renewal flood insurance shall be denied to a structure upon a finding by the Administrator of a valid declaration of a violation.

(c) States and communities shall determine whether to submit a declaration to the Administrator for the denial of insurance.

(d) A valid declaration shall consist of:

(1) The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;

(2) A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation or ordinance;

(3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;

(4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and

(5) A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

§ 73.4 Restoration of flood insurance coverage.

(a) Insurance availability shall be restored to a property upon a finding by the Administrator of a valid rescission of a declaration of a violation.

(b) A valid rescission shall be submitted to the Administrator and shall consist of:

(1) The name of the property owner(s) and an address or legal description of the property sufficient to identify the property and to enable FEMA to identify the previous declaration;

(2) A clear and unequivocal statement by an authorized public body rescinding the declaration and giving the reason(s) for the rescission;

(3) A description of and supporting documentation for the measures taken in lieu of denial of insurance in order to bring the structure into compliance with the local flood plain management regulations; and

(4) A clear statement that the public body rescinding the declaration has the authority to do so and a citation to that authority.

PART 74 [RESERVED]

PART 75—EXEMPTION OF STATE-OWNED PROPERTIES UNDER SELF-INSURANCE PLAN

Subpart A—General

Sec.

75.1 Purpose of part.
75.2 Definitions.
75.3 Burden of proof.

Subpart B—Standards for Exemption

75.10 Applicability.
75.11 Standards.
75.12 Application by a State for exemption.
75.13 Review by the Administrator.
75.14 States exempt under this part.

AUTHORITY: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 41 FR 46991, Oct. 26, 1976, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—General

§ 75.1 Purpose of part.

The purpose of this part is to establish standards with respect to the Administrator's determinations that a State's plan of self-insurance is adequate and satisfactory for the purposes of exempting such State, under the provisions of section 102(c) of the Act, from the requirement of purchasing flood insurance coverage for State-owned structures and their contents in areas identified by the Administrator as A, A0, AH, A1-30, AE, A99, M, V, VO, V1-30, VE, and E Zones, in which the sale of insurance has been made available, and to establish the procedures by which a State may request exemption under section 102(c).

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 5621, Feb. 14, 1984; 50 FR 36029, Sept. 4, 1985]

§ 75.2 Definitions.

The definitions set forth in Part 59 of this subchapter are applicable to this part.

§ 75.3 Burden of proof.

In any application made by a State to the Administrator for certification of its self-insurance plan, the burden of proof shall rest upon the State making application to establish that its policy of self-insurance is adequate and equals or exceeds the standards provided in this part.

Subpart B—Standards for Exemption

§ 75.10 Applicability.

A State shall be exempt from the requirement to purchase flood insurance in respect to State-owned structures and, where applicable, their contents located or to be located in areas identified by the Administrator as A, A0, AH, A1–30, AE, A99, M, V, VO, V1–30, VE and E Zones, and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, provided that the State has established a plan of self-insurance determined by the Administrator to equal or exceed the standards set forth in this subpart.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 5621, Feb. 14, 1984; 50 FR 36029, Sept. 4, 1985]

§ 75.11 Standards.

(a) In order to be exempt under this part, the State's self-insurance plan shall, as a minimum:

(1) Constitute a formal policy or plan of self-insurance created by statute or regulation authorized pursuant to statute.

(2) Specify that the hazards covered by the self-insurance plan expressly include the flood and flood-related hazards which are covered under the Standard Flood Insurance Policy.

(3) Provide coverage to state-owned structures and their contents equal to that which would otherwise be available under a Standard Flood Insurance Policy.

(4) Consist of a self-insurance fund and/or a commercial policy of insurance or reinsurance for which provision is made in statute or regulation and which is funded by periodic premiums or charges allocated for state-owned structures and their contents in areas identified by the Administrator as A, A0, AH, A1–30, AE, A99, M, V, VO, V1–30, VE, and E Zones. The person or persons responsible for such self-insurance fund shall report on its status to the chief executive authority of the State, or to the legislature, or both, not less frequently than annually. The loss experience shall be shown for each calendar or fiscal year from inception to current date based upon loss and loss adjustment expense incurred during each separate calendar or fiscal year compared to the premiums or charges for each of the respective calendar or fiscal years. Such incurred losses shall be reported in aggregate by cause of loss under a loss coding system adequate, as a minimum, to identify and isolate loss caused by flood, mudslide (i.e., mudflow) or flood-related erosion. The Administrator may, subject to the requirements of paragraph (a)(5) of this section, accept and approve in lieu of, and as the reasonable equivalent of the self-insurance fund, an enforceable commitment of funds by the State, the enforceability of which shall be certified to by the State's Attorney General, or other principal legal officer. Such funds, or enforceable commitment of funds in amounts not less than the limits of coverage which would be applicable under Standard Flood Insurance Policies, shall be used by the State for the repair or restoration of State-owned structures and their contents damaged as a result of flood-related losses occurring in areas identified by the Administrator as A, A0, AH, A1–30, AE, A99, M, V, VO, V1–30, VE, and E Zones.

(5) Provide for the maintaining and updating by a designated State official or agency not less frequently than annually of an inventory of all State-owned structures and their contents within A, A0, AH, A1–30, AE, A99, M, V, VO, V1–30, VE, and E Zones. The inventory shall: (i) Include the location of individual structures; (ii) in-

clude an estimate of the current replacement costs of such structures and their contents, or of their current economic value; and (iii) include an estimate of the anticipated annual loss due to flood damage.

(6) Provide the flood loss experience for State-owned structures and their contents based upon incurred losses for a period of not less than the 5 years immediately preceding application for exemption, and certify that such historical information shall be maintained and updated.

(7) Include, pursuant to § 60.12 of this subchapter, a certified copy of the flood plain management regulations setting forth standards for State-owned properties within A, A0, AH, A1-30, AE, A99, M, V, VO, V1-30, VE, and E Zones.

(b) The Administrator shall determine the adequacy of the insurance provisions whether they be based on available funds, an enforceable commitment of funds, commercial insurance, or some combination thereof, but has discretion to waive specific requirements under this part.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 5621, Feb. 14, 1984; 50 FR 36029, Sept. 4, 1985]

§ 75.12 Application by a State for exemption.

Application for exemption made pursuant to this part shall be made by the Governor or other duly authorized official of the State accompanied by sufficient supporting documentation which certifies that the plan of self-insurance upon which the application for exemption is based meets or exceeds the standards set forth in § 75.11.

§ 75.13 Review by the Administrator.

(a) The Administrator may return the application for exemption upon finding it incomplete or upon finding that additional information is required in order to make a determination as to the adequacy of the self-insurance plan.

(b) Upon determining that the State's plan of self-insurance is inadequate, the Administrator shall in writing reject the application for exemption and shall state in what respects the plan fails to comply with the standards set forth in § 75.11 of this subpart.

(c) Upon determining that the State's plan of self-insurance equals or exceeds the standards set forth in § 75.11 of this subpart, the Administrator shall certify that the State is exempt from the requirement for the purchase of flood insurance for State-owned structures and their contents located or to be located in areas identified by the Administrator as A, A0, AH, A1-30, AE, A99, M, V, VO, V1-30, VE, and E Zones. Such exemption, however, is in all cases provisional. The Administrator shall review the plan for continued compliance with the criteria set forth in this part and may request updated documentation for the purpose of such review. If the plan is found to be inadequate and is not corrected within ninety days from the date that such inadequacies were identified, the Administrator may revoke his certification.

(d) Documentation which cannot reasonably be provided at the time of application for exemption shall be submitted within six months of the application date. The Administrator may revoke his certification for a State's failure to submit adequate documentation after the six month period.

[41 FR 46991, Oct. 26, 1976. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 44544, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 5621, Feb. 14, 1984; 50 FR 36029, Sept. 4, 1985]

§ 75.14 States exempt under this part.

The following States have submitted applications and adequate supporting documentation and have been determined by the Administrator to be exempt from the requirement of flood insurance on State-owned structures and their contents because they have in effect adequate State plans of self-insurance: Florida, Georgia, Iowa, Maine, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, and Vermont.

[48 FR 44544, Sept. 29, 1983]

best copy available

PART 76—[RESERVED]

PART 77—ACQUISITION OF FLOOD DAMAGED STRUCTURES

GENERAL PROVISIONS

Sec.
77.1 Definitions.
77.2 Criteria for acquisition.

AUTHORITY: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12148.

GENERAL PROVISIONS

§ 77.1 Definitions.

(a) Definitions found in § 59.1 of this subchapter are applicable to this section.

(b) Furthermore, the following definitions are established:

Damaged Substantially Beyond Repair—means where (a) damages to the improved real property are such that as a condition of repair as imposed by a state or local government, the structure must be elevated or floodproofed to or above the 100-year flood elevation, or (b) damages to the improved real property equals or exceed 50 percent of the structure's fair market or actual cash value, whichever is less, or (c) where damages to the improved real property are such that repair is physically impossible or infeasible.

Flood Risk Area—See definition for *Special Hazard Area* in § 59.1, or other area subject to flooding as determined by the Administrator.

Significantly Increased Construction Cost—occurs when a specific State or local statute, ordinance, or code requires that improvements be made to a structure as a condition of the repair of damages sustained, such that the actual cost of repair would be greater by 25 percent than the cost which would be required for repair of the damages only.

Sound Land Management and Use—The process wherein the governmental body responsible for land use regulation in a political jurisdiction plans and regulates the use of land within its jurisdiction in order to promote the reduction of property exposure to flood hazard and the protection of environmental values of flood plains. Sound use of land acquired by FEMA and transferred to local governments pursuant to section 1362 of Pub. L. 95-128 is use for primarily open space and recreational purposes to minimize potential for any future flood damage, with a general prohibition of enclosed structures unless functionally dependent for some recreational or open space use. The criteria set forth in paragraphs (d)(1) through (4), of § 77.2 and restrictions to be placed in deeds used to convey title to real property from the Federal Government to local governments will set forth more specific requirements to be used in determining what constitutes sound Land Management and Use for individual land parcels.

[45 FR 50282, July 28, 1980, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984]

§ 77.2 Criteria for acquisition.

(a) The objectives of the Flooded Property Purchase Program under the National Flood Insurance Program are:

(1) To reduce future flood insurance and disaster assistance costs by removing repetitively and/or substantially damaged structures from flood risk areas;

(2) To provide an opportunity for owners of repetitively and substantially damaged structures to be permanently removed from flood risk areas, and to reduce risk to life from flooding; and

(3) To complement Federal, State and local efforts to restore flood plain values, protect the environment and provide recreational and open space resources.

(b) The Administrator will, when he or she deems it to be in the public interest, enter into negotiation with property owners whose improved real property has been damaged by flooding for the purpose of purchasing such buildings and associated land or lot for transfer by sale, lease, or donation to a community when the following conditions are met:

(1) The property must be located in a flood risk area as determined by the Administrator;

(2) The property must have been covered by a flood insurance policy under the National Flood Insurance Program at the time damage took place.

(3) The building, while covered by flood insurance under the National Flood Insurance program, must have been damaged substantially beyond repair or must have been damaged not less than three previous times during the preceding five year period, each time the cost of repair equalling 25 percent or more of the structure's value, or must have been damaged from a single casualty of any nature so that a statute, ordinance or regulation precludes its repair or restoration or permits repair or restoration only at significantly increased cost.

(4) A State or local community must enter into an agreement authorized by ordinance or legally binding resolution to take title to and manage the property in a manner consistent with sound land managment use as determined by the Administrator.

(5) The community must agree to remove without cost to the Federal Emergency Management Agency (FEMA), by demolition, relocation, donation or sale any damaged structures to which the community accepts title from FEMA, provided the Administrator may, when it is in the public interest to do so, agree to assume a part or all of the cost of such removal.

(c) Title to the real property acquired by FEMA shall be conveyed to local communities subject to specific restrictive covenants, conditions and agreements which will run with the land and be binding on subsequent successors, grantees and assigns. These restrictive covenants, conditions and agreements will be recited in the deed a community receives from FEMA and the community shall join in the execution of the deed.

(d) The general criteria from which specific deed restrictions will be developed may include, among other things, that:

(1) The land must be dedicated in perpetuity for open space purposes, or such other purposes as the Administrator may agree are consistent with the objectives set forth in paragraphs (a)(1) through (3) of this section; that the community shall faithfully manage the land for its dedicated purposes; that the community shall not erect or permit to be erected and structures or other improvements on the land unless such structures are, except for restrooms, open on all sides and functionally related to a designated open space use without the prior approval in writing of the Administrator; and that the community shall not permit any use which will create a threat to human life from flooding.

(2) In general, allowable open space uses include parks for outdoor recreational activities, nature reserves, cultivation, grazing, camping (except where adequate warning time is not available to allow evacuation), temporary storage in the open of wheeled vehicles which are easily movable (except mobile homes), unimproved parking lots, buffer zones, or open space areas that are part of Planned Unit Developments (PUD's). Structures functionally related to these uses are open-sided picnic and camping facilities, kiosks and refreshment stands or nonhabitable, elevated or floodproofed service structures associated with a marina.

(3) The rights to enforce the restrictive covenants shall be assigned to the Administrator as assignee, together with a declaration that any future violation of the restrictive covenants or agreements, delivered in writing to the Chief Executive Officer within thirty (30) days from the date the Administrator receives actual notice of the violation, shall be deemed at the Administrator's option to cause a reversion of title to FEMA.

(4) The property shall be transferred subject to zoning and building laws and ordinances; easements, agreements, reservations, covenants and restriction of record; any state of facts an accurate survey might show; encroachments and variations from the record lines of hedges, retaining walls, sidewalks and fences;

(e) Any structures, as described at paragraph (d)(2) of this section, and built in accordance with the deed restrictions shall be floodproofed or elevated to withstand the effects of the 500 year or .02 percent chance flood.

(f) Appraisals for the determination of compensation for flood damaged real property will be undertaken in conformance with the "Uniform Appraisal Standards for Federal Land Acquisitions" published by the Interagency Land Acquisition Conference, GPO (1973). Appraisals will reflect the adjusted (for time) pre-damage fair market value (FMV) of the structure and land to the extent that this FMV may have been reduced or depressed in the open market as a result of flooding. Actual compensation of FMV will be inclusive of any flood insurance claim payments made or to be made as a result of the most recent flood event to the extent that repairs have not yet been made.

(g) Agreement to sell real property on the part of owners will be completely voluntary. No property owners will be required to sell their properties under section 1362.

(h) Relocation assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 et seq.) is not available to property owners who sell their properties under section 1362.

[45 FR 50282, July 28, 1980, as amended at 48 FR 44553, Sept. 29, 1983; 49 FR 4751, Feb. 8, 1984; 49 FR 33879, Aug. 27, 1984]

PARTS 78–79 [RESERVED]

FEDERAL CRIME INSURANCE PROGRAM

PART 80—DESCRIPTION OF PROGRAM AND OFFER TO AGENTS

Sec.

80.1 Definitions.
80.2 Description of program.
80.3 Operation of program and inapplicability of State laws.
80.4 Offer to pay commissions to State licensed property insurance agents and brokers for submitting applications on behalf of purchasers for Federal crime insurance.
80.5 Duties of servicing companies.
80.6 Name and address of invoicing company.

AUTHORITY: 12 U.S.C. 1749bbb *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 80.1 Definitions.

(a) As used in this subchapter and in the crime insurance policies issued by the Federal Insurance Administrator, unless otherwise defined in the text of such policies—

(1) [Reserved]

(2) "Adjuster" means any person engaged in the business of adjusting loss claims arising under property insurance policies issued by an insurance company. The term also includes the staff adjusters of servicing companies;

(3) "Affordable rate" means such premium rate as the Director determines would permit the purchase of a specific type of insurance coverage by a reasonably prudent person in similar circumstances with due regard to the costs and benefits involved. For the purposes of the sale of Federal crime insurance, the rates set forth in Part 83 of this chapter shall be deemed affordable;

(4) "Agent or broker" means any person authorized to engage in the property insurance business as an agent or broker under the laws of any State;

(5) "Crime insurance" means insurance against losses resulting from robbery, burglary, larceny, and similar crimes, as more specifically defined and limited in Part 83 of this chapter and in the various crime insurance policies issued by the insurer. The term does not include automobile insurance or losses resulting from embezzlement;

(6) "Discounts". The premium credit issued to a residential or business insured protected by a burglar alarm system, or other protective devices or methods used to mitigate losses and considered adequate by the Administrator for the type of risk involved, such as protective armored car services.

(7) "Deductible" means the fixed amount or percentage of any loss not covered by an insurance policy. The amount of the deductible must be exceeded before insurance coverage takes effect;

(8) "Eligible premises" means a property eligible for crime insurance coverage under one or more of the

types of policies described in Part 83 of this chapter;

(9) "Insurance company" means any property insurance company, or group of companies, authorized to engage in the insurance business under the laws of any State;

(10) "Insurer" means the Federal Insurance Administrator, Federal Emergency Management Agency, Washington, DC.

(11) "Policyholder premium" means the total insurance premium payable by the insured for the coverage or coverages provided under any insurance policy;

(12) "Program" means the Federal crime insurance program authorized by title VI of the Housing and Urban Development Act of 1970 (Pub. L. 91-609, December 31, 1970), set forth principally in 12 U.S.C. 1749bbb-10a, et seq.;

(13) "Protective device" means any structural, mechanical, electrical, chemical, or other physical obstacle or device that can be utilized by a property owner to prevent or deter crime or to minimize losses;

(14) "Protective measure" means any protective device or other measure or procedure employed to prevent or deter crime or to minimize losses; and

(15) "Servicing company" means an insurance company or other organization that has entered into an agreement with the insurer to issue and service Federal crime insurance policies on the insurer's behalf in one or more States or areas eligible for the sale of such insurance.

(16) "Act" means the Urban Property Protection and Reinsurance Act of 1968, codified as title XII of the National Housing Act (12 U.S.C. 1749bbb-1749bbb-21), which authorized the program. Section references are to the National Housing Act;

(17) "Administrator" means the Federal Insurance Administrator within the Federal Emergency Management Agency, to whom the Director has delegated the administration of the program.

(18) "Binder" means a temporary and preliminary contract of insurance to protect owner against loss from the occurrence of an insurable event before a policy is issued;

(19) "Person" includes any individual, group of individuals, corporation, partnership, association, or any other organized group of persons;

(20) "Property owner" or "owner," with respect to any real property, personal property, or mixed real and personal property, means any person having an insurable interest in such property;

(21) "Director" means the Director of the Federal Emergency Management Agency;

(22) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions, and the Trust Territory of the Pacific Islands;

(23) "State insurance authority" means the person having legal responsibility for regulating the business of insurance within a State.

(b) Technical or trade terms used in this subchapter or in the crime insurance policies issued by the Federal Insurance Administrator and not otherwise defined therein shall be deemed to have the most general meaning they have in the standard crime insurance policies providing similar coverages issued by private insurance companies.

[36 FR 24769, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 47 FR 13150, Mar. 29, 1982; 50 FR 16494, Apr. 26, 1985; 51 FR 34605, Sept. 30, 1986; 53 FR 11276, Apr. 6, 1988]

§ 80.2 Description of program.

(a) Title VI of the Housing and Urban Development Act of 1970 (Pub. L. 91-609, approved December 31, 1970) authorizes the Director of the Federal Emergency Management Agency on and after August 1, 1971, to make crime insurance available at affordable rates in any State in which a critical market unavailability situation for crime insurance exists that has not been met through appropriate State action. The Director is directed to conduct a continuing review of the market availability situation in each of the several States to determine whether crime insurance is available at affordable rates either through the normal insurance market or through a suitable program adopted under State law. The Director's basic authority under this title has been delegated to the Federal Insurance Administrator.

(b) The purpose of the delayed effective date for the Federal program is to give the private property insurance industry and the State insurance authorities an opportunity to solve the crime insurance unavailability problem through the establishment of appropriate programs under the authority of State law. Where adequate State solutions to the price and market problems are adopted, Federal crime insurance will not be sold.

(c) In States where the sale of Federal crime insurance is undertaken, policies will initially be sold primarily through agents and brokers licensed to engage in the insurance business within the State for which the policy is written. Policies may also be purchased from the appropriate servicing company.

(d) Lists of States designated as eligible for the sale of Federal crime insurance will be published from time to time in § 81.1 of this chapter, subject to periodic revisions pursuant to determinations by the Federal Insurance Administrator that a critical crime insurance market unavailability or prohibitive cost situation exists in a particular State, or that the standard lines of crime insurance have become available at affordable rates either through a suitable State program or through the private insurance market.

§ 80.3 Operation of program and inapplicability of State laws.

(a) The crime insurance program authorized by the Act is a direct Federal program, and its operations, receipts, and funds are exempt from any form of Federal, State, or local taxation in accordance with section 1250 of the Act (12 U.S.C. 1749bbb-20). In carrying out the program, the Administrator is authorized to define terms (sections 1203 (b); 1749bbb-2(b)), to issue regulations (sections 1247; 1749bbb-17), to establish premium rates (sections 1233; 1749bbb-10c), to prescribe terms, conditions, and limits of coverage (sections 1231(b); 1749bbb-10a(b)), and to make use of the existing facilities and services of insurance companies, agents, and brokers as fiscal agents of the United States (sections 1232; 1749bbb-10b).

(b) No Federal crime insurance policy issued by or on behalf of the insurer shall be subject to any State or local tax or insurance law or regulation, nor shall any agent, broker, or servicing company be subject thereto with respect to any monies received or action taken in providing insurance to the public under the authority of this subchapter; and no insurance policy shall be written by any agent, broker, or servicing company in the name or on behalf of the insurer in any form, or on terms and conditions, or with limits of coverage, or at premium rates, other than those then currently prescribed by the insurer. Failure by any insurance company, broker, or agent to comply with this requirement may result in the immediate suspension or debarment of the violator from any further participation in the program.

(c) Nothing in this § 80.3 shall be construed as authorizing or denying any State or subdivision thereof the right to impose any income or other tax on fees, commissions, or profits earned by agents, brokers, or servicing companies solely for their own account.

§ 80.4 Offer to pay commissions to State licensed property insurance agents and brokers for submitting applications on behalf of purchasers for Federal crime insurance.

(a) The insurer hereby offers to pay to an eligible State licensed property insurance agent or broker a commission in an amount equal to the specified percentage of the applicable policyholder premium with respect to each Federal crime insurance policy procured for an eligible applicant in accordance with the provisions of this subchapter. The actual submission of a valid and complete application, together with the applicable premium, resulting in the issuance of a policy to an eligible insured, all on approved forms and in accordance with the provisions of this subchapter, shall be deemed an acceptance of this offer subject to avoidance from the inception of the policy in the event of fraud or misrepresentation and to cancellation by the insurer (for any of the reasons set forth in § 81.7 of this chapter) or by the insured, and provided the agent or broker promptly submits the application and transmits the gross amount of the policyholder premium then due to the insurer and complies with respect to such policy, with any additional procedural requirements the insurer may then have imposed. It shall be a further condition of this offer that the agent or broker must certify on the application that any duties set forth in the application have been fully carried out. The amount of the commission shall be prorated in the event of the cancellation of any validly issued policy, and the agent or broker shall repay to the insurer the amount of any unearned commission in excess of the minimum annual commission applicable to the then current term of the policy resulting from any such cancellation. Premiums must be paid by a check or money order made payable to the Federal Crime Insurance Program, and no agent or broker shall cause any applicant to make any Federal crime insurance premium payable to anyone other than the Federal Crime Insurance Program.

(b) Commissions earned by eligible agents and brokers under the authority of paragraph (a) of this section shall be paid to them in a lump sum by the insurer either monthly or on such other equitable basis as the insurer may approve.

(c) Subject to a minimum annual commission of $15 on each commercial policy and $5 on each residential policy, the specified commission percentage of the policyholder premium for both residential and commercial insurance coverages shall be the following: Initial policies 14% and for all renewal policies 12%. The renewal commission rate shall apply to any property that has previously been insured under the Program unless the lapse of time since the termination of the previous policy is in excess of 6 months. The commission for any renewal policy shall be deemed payable only to the property insurance agent or broker, of record, if any. A change of agent or broker made at any time other than on a policy anniversary date must be accomplished by the submission of a new application with the applicable premium and a request to replace the policy in force.

(d) No service, placement, or other fee of whatsoever nature shall be charged by any agent, broker, or servicing company to any applicant or property owner under the Program as a condition of placement or for service on an existing policy; nor shall any applicant be compelled to purchase any other services or merchandise as a condition for having his application submitted. No fee may be collected, retained or shared by any agent or broker for the reporting or adjustment of any Federal crime insurance claim.

(e) For the purposes of this offer, an eligible agent or broker means an agent or broker who is at the time of making application for the policy and at the time of subsequent renewals, licensed and authorized to act as a property insurance agent or broker with respect to the State where the insured premises are located and who has not been suspended or debarred by the insurer. Such agent or broker is the agent or broker of the insured and is not an agent of the Federal government nor any Federal agency, except as otherwise expressly provided herein. An eligible applicant is one whose premises to be insured are located in a State then currently designated as eligible for the sale of Federal crime insurance in § 81.1 of this chapter.

(f) Insureds will be billed directly by the insurer for all installments (including any servicing fee) and renewal payments, and insureds should make payment by check or money order payable to the Federal Crime Insurance Program and mail such payment to the insurer and not to the agent or broker. But, nevertheless, in the event that an insured makes a timely installment payment of the current premium (after the initial payment submitted with the application) to any agent or broker, proof submitted by the insured, the agent or the broker of the timely receipt by the agent or broker may be deemed by the Administrator to be proof of timely payment to the insurer so that the insured will not be penalized because of an error or omission on the part of the agent or broker in forwarding the payment to the insurer.

(g) Neither this § 80.4 nor any acceptance of this offer shall be deemed to confer upon any agent or broker any authority to act for, represent, or bind the insurer or the United States except as otherwise expressly provided herein.

(h) Failure of any person to comply with any provision of these regulations may result in the immediate suspension or debarment of the violator from any further participation in the Program.

[45 FR 41950, June 23, 1980, as amended at 47 FR 19348, May 5, 1982; 52 FR 30684, Aug. 17, 1987]

§ 80.5 Duties of servicing companies.

(a) The general duties of servicing companies shall be as set forth in this § 80.5, subject to the provisions of the actual contracts entered into with such companies by the insurer.

(b) Except as otherwise required by their contracts with the insurer, servicing companies shall:

(1) Provide information to eligible property owners and to interested agents and brokers within the servicing area;

(2) Provide crime insurance manuals to eligble agents and brokers within the servicing area;

(3) Supply application forms and notice and proof of loss forms to eligible agents and brokers and to prospective applicants on request;

(4) Maintain, control, and account for applications for insurance received from eligible agents, brokers, and applicants;

(5) Verify the eligibility of applicants for the coverages sought;

(6) Issue policies only on forms prescribed and supplied by the insurer, or else promptly notify applicants (through the appropriate agent or broker, if any) of ineligibility;

(7) Deposit the applicant's premium check in a special bank account. If no policy is issued, refund the amount of the premium to the applicant through the agent or broker, if any;

(8) Issue periodic commission payment checks to cooperating agents and brokers;

(9) Provide statistical and accounting records, coding, and reports, in hard copy and machine-readable forms, as specified in the insurer's statistical plan and accounting instructions, and as may be specifically requested by the insurer, all in timely fashion;

(10) Receive, control, and account for all crime insurance claims submitted within its servicing area;

(11) Verify claims data and existence of required protective devices, adjust losses as required by insurer through an impartial selection of adjusters, and promptly pay all valid claims;

(12) Bill policyholders directly at least 30 days in advance of due dates, and send a copy of each premium or renewal notice to the agent or broker of record, if any;

(13) Periodically obtain updated applications or certifications from insureds for verification and incorporation in statistical and accounting records.

[36 FR 24769, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 41951, June 23, 1980]

§ 80.6 Name and address of invoicing company.

The following company has been designated to act as servicing company for the Federal Crime Insurance Program, National Con-Serv, Inc. Written communications with the servicing company should be addressed to: Federal Crime Insurance, P.O. Box 6301, Rockville, MD 20850. The toll free telephone number for the servicing company is 800-638-8780 (policyholder service) and 800-526-2662 (claim inquiries). These numbers serve the continental United States, Puerto Rico and the Virgin Islands, except Maryland and the Washington Metropolitan Area. In the Washington Metropolitan Area call 251-1660. In Maryland, outside the Washington Metropolitan Area, call collect 301-251-1660.

[52 FR 30684, Aug. 17, 1987]

PART 81—PURCHASE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Sec.
81.1 States eligible for the sale of crime insurance.
81.2 Eligibility requirements applicable to property owners.
81.3 Use of prescribed forms required.
81.4 Terms and conditions of policy to govern.
81.5 Where to purchase coverage.
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81.8 Inquiries and complaints.
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AUTHORITY: 12 U.S.C. 1749bbb *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

SOURCE: 36 FR 24771, Dec. 22, 1971, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

§ 81.1 States eligible for the sale of crime insurance.

(a) In accordance with section 1231 of the Act (12 U.S.C. 1749bbb-10a), the Administrator has reviewed the market availability situation in each of the several States to determine whether crime insurance is available at affordable rates either through the normal insurance market or through a suitable program adopted under State law.

(b)(1) On the basis of the information available, the Federal Insurance Administrator has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and the States set forth in this paragraph have an unresolved critical crime insurance market unavailability problem which requires the operation of the Federal Crime Insurance Program therein, as of July 1, 1987. Accordingly, the Program is in operation in the following jurisdictions, as of July 1, 1987:

Alabama
California
Connecticut
Delaware
Florida
Georgia
Illinois
Kansas
Maryland
New Jersey
Ohio
New York
Pennsylvania
Rhode Island
Tennessee
District of Columbia
Puerto Rico
Virgin Islands

(2) On the basis of the information available, the Federal Insurance Administrator has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and the States set forth in this paragraph have an unresolved critical crime insurance market unavailability problem which requires the operation of the Federal Crime Insurance Program, therein, as of October 1, 1987. Accordingly, the Program is in operation in the following jurisdictions, as of October 1, 1987.

Alabama
California
Connecticut
Delaware
Florida
Georgia
Illinois
Kansas
Maryland
New Jersey
New York
Pennsylvania
Rhode Island
Tennessee
District of Columbia
Puerto Rico
Virgin Islands

(c) If any of the States listed in paragraph (b) of this section, after the effective date of this subchapter, adopts a suitable program under State law to make the standard lines of crime insurance available within that State at affordable rates, or if such insurance becomes generally available through the normal insurance market at affordable rates, then in either case the eligibility of such State for the subsequent sale of crime insurance under the Program will be promptly terminated by the insurer.

(d) Notwithstanding the provisions of § 81.7, Federal Crime Insurance policies in-force at the time a State is determined to be no longer eligible for further participation in the program shall thereupon be terminated upon 30 days written notice to the policyholders effective on the expiration date of the policy and no further coverage for such policyholders with respect to premises located in such State shall thereafter be written unless the State again becomes eligible under the program.

[36 FR 24771, Dec. 22, 1971, Redesignated at 44 FR 31177, May 31, 1979, and amended at 52 FR 21036, June 4, 1987; 52 FR 30684, Aug. 17, 1987]

§ 81.2 Eligibility requirements applicable to property owners.

(a) To be eligible for the purchase of Federal crime insurance under the program, a property owner or tenant must:

(1) Apply separately for coverage for each eligible premises within an eligible State and personally sign each application, either on the application form itself or on any applicable amendatory endorsement, or both, as the insurer may require;

(2) Pay the annual premium or six-month premium installment at the time of application. Coverage will commence in accordance with §§ 83.5 and 83.25a.

(3) Agree to permit inspections of the insured premises by the insurer or his representative at any reasonable time or times; and

(4) Agree to report to law enforcement authorities all crime losses of property covered under each policy, whether or not a claim is filed.

(b) Failure to comply fully with the requirements of paragraph (a) of this section may result in the avoidance, cancellation, or nonrenewal of coverage, as set forth in § 81.7.

(c) Any material misstatement of fact in the application or in any form submitted at the time of any subsequent renewal may result in the voiding of the policy and the denial of any claim. Intentionally false or misleading statements, either in the application, at the time of subsequent renewals, or in connection with any claim submitted under this program may also result in prosecution.

[36 FR 24771, Dec. 22, 1971, as amended at 43 FR 4008, Jan. 31, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 41951, June 23, 1980; 47 FR 19348, May 5, 1982]

§ 81.3 Use of prescribed forms required.

No Federal crime insurance is authorized to be written under the program on any form other than the form prescribed by the insurer for the type of coverage involved. Any insurance policy purportedly issued on behalf of the insurer or any other form shall not be binding upon the insurer and shall not confer any liability upon the insurer by reason of any act or representation of the agent, broker, or servicing company in illegally causing such policy to be issued.

§ 81.4 Terms and conditions of policy to govern.

(a) Except as otherwise specifically provided by this subchapter, the respective rights and duties of the insurer and the insured shall be as set forth in the prescribed application form and the prescribed policy form. All purchasers of Federal crime insurance shall be deemed to have knowledge of the terms and conditions of coverage set forth in such policies and in this subchapter. Although the insurer will endeavor to provide actual notice of policy changes through the appropriate servicing company, modifications of this subchapter that are made during the term of an existing policy shall automatically become applicable to the policy at the time of its next renewal. All Federal crime insurance policies shall be issued for a term of 1 year, subject to semiannual premium payments.

(b) The rights of the insurer to require inspections of the insured premises, production of books and records, appraisals of damaged property, subrogation in the event of payment, and prompt notice in the event of loss, shall be as specified in the prescribed policy, of which the application forms a part. The rights of the insured with respect to the coverages provided, extensions of coverage outside the insured premises or with respect to other persons, limits of such coverages, appraisals, cancellations, and judicial review shall be as set forth in the prescribed policy.

(c) Changes in the provisions of this subchapter which broaden or liberalize the coverages being provided under the prescribed policy forms, but do not require any additional premium to be charged, shall be applicable to all existing and future policies of insurance as of the date of their adoption, without the necessity of endorsement.

[36 FR 24771, Dec. 22, 1971, as amended at 37 FR 15297, July 29, 1972. Redesignated at 44 FR 31177, May 31, 1979 and amended at 47 FR 19348, May 5, 1982]

§ 81.5 Where to purchase coverage.

Subject to the provisions of this subchapter, Federal crime insurance coverage may be purchased from any property insurance agent or broker authorized to do business in the State in which the premises to be insured are located, or directly from the appropriate servicing company.

§ 81.6 How to report claims.

Losses under a Federal crime insurance policy which exceed the applicable deductible may be reported either to the agent or broker through whom the application was submitted, or directly to the servicing company designated for the area in which the loss occurs. The claimant will be required to report all pertinent information, including a description of the loss, time, place, ownership, manner of acquisition, cost, depreciation, current value, amount of claim, and whether the insured has incurred previous losses under the policy. A sworn proof of loss statement must be submitted to the adjuster or servicing company that processes the claim.

§ 81.7 Cancellations, modifications, and renewals of coverage.

(a) Unless coverage has previously been canceled or renewal is refused by the insurer for one or more of the reasons set forth in this part, each property owner within an eligible State who is validly insured under any policy or policies of insurance issued under the Federal crime insurance program shall be entitled to renew (i.e., to purchase the then current and applicable form of crime insurance) coverage upon the expiration of such existing policy or policies. The renewal shall be subject to the rules, regulations, and policy terms, conditions, and rates then in effect.

(b) A renewal notice will be sent by the servicing company to the insured at least 30 days prior to the expiration date of each policy. Insureds renewing policies shall be furnished with such additional forms, if any, as the insurer may require in order to obtain current information pertaining to the risk. Any such form must be completed and returned by the insured with the premium. The 6-month premium installment then due, together with the insured's certification as required, must be received by the servicing company not later than the expiration date of the previous policy in order to prevent a lapse in coverage. If timely payment is received, no new policy will normally be issued, and an eligible insured's check or receipt shall constitute his proof of payment. However, if timely payment is not received, or if substantial changes have been made in the regulations or provisions governing the pertinent crime insurance coverage during the term of the insured's previous coverage, a new policy in its entirety may be issued. Reinstatement of lapsed policies by servicing companies shall not be permitted.

(c) Changes in coverage or limits of coverage may be made at any time upon submission of a new application with the applicable semi-annual premium. If the ownership of an insured premises is changed, the new owner must submit a new application with the applicable semi-annual premium. Policy coverage ceases at the time of ownership change and a policy may not be transferred or assigned to a new owner or tenant except by submission of a new application. Policy coverage ceases at the time of any change in the ownership of or insurable interest in the premises specified in the application. Upon receipt of information indicating that such a change in ownership or insurable interest has occurred, the insurer shall issue a notice of cancellation effective the date of such change. Return of premium on a cancelled policy shall be on a pro rata basis when such cancellation is made for the purpose of changing address or coverage or limits of coverage or for purchasing crime insurance coverage in the private insurance market. Short-rate cancellation procedures shall be applicable to any other cancellation during the term of any policy. The insurer may, at the request of the insured, permit a retroactive cancellation of a policy, but in no event shall such cancellation be effective earlier than thirty days before receipt by the insurer of a lost policy release or the original policy, and such cancellation shall apply only to the policy in force at the time of the receipt of such request.

(d) Notwithstanding any unqualified cancellation provisions contained in the prescribed policy forms, the insurer hereby limits his right to cancel, or to refuse to renew coverage, to the following grounds:

(1) Any nonpayment of premium,

(2) Fraud or misrepresentation in the application or upon any renewal of coverage, or in connection with either,

(3) Fraud or misrepresentation in connection with the submission of a claim,

(4) The use of the insured premises with the knowledge of any insured for any illegal activity, or

(5) Any other substantial failure to comply with the provisions of this subchapter or of the insurance policy as determined by the insurer and stated in its notice of cancellation.

Cancellations or any of the grounds in paragraph (d) (2), (3), or (4) of this section may, at the discretion of the insurer, be made retroactive to the date of application or renewal which immediately precedes the first known wrongful act. Refunds of unearned premiums, if any, shall be subject to offsets for the insurer's administrative expenses (including the payment of agent's commissions, if any) in connection with the issuance of the policy, any inspections of the insured's premises and the expense of claims adjustment, if any. Cancellations by the insurer on the basis of paragraph (d)(5) of this section or as provided by paragraph (e) of this section shall be upon 30 days written notice, and the insured shall be entitled to a short rate refund of premium, if any.

(e) Willful or repeated failures of an insured to report to law enforcement authorities any losses of property covered under the policy, as required by § 81.2(a)(5), may be deemed by the insurer to warrant cancellation of coverage upon 30 days' written notice. However, such failure may be waived by the insurer prior to cancellation for good cause shown.

(f) No property owner whose Federal insurance coverage has been canceled (whether from inception or after notice) or for whom the insurer has refused to renew coverage, for any of the reasons in paragraph (d) (2), (3), (4), or (5) of this section or under paragraph (e) of this section, shall be eligible for any further insurance under the program except upon the written waiver of the Administrator, granted for good cause shown.

[36 FR 24771, Dec. 22, 1971, as amended at 37 FR 15297, July 29, 1972; 43 FR 4008, Jan. 31, 1978. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 41951, June 23, 1980; 47 FR 19348, May 5, 1982]

§ 81.7a Cancellations in order to renew.

Notwithstanding the provisions of § 81.7(c), an insured shall not be permitted after the effective date of any applicable rate reduction to cancel and rewrite an existing crime insurance policy and receive a pro rata refund of unearned premium. Further, cancellation and rewrite of coverage to avoid an impending rate increase shall not be permitted, unless such cancellation was made to accomplish an increase in the amount of insurance coverage or as a result of the removal of insured to another premises.

[52 FR 30684, Aug. 17, 1987]

§ 81.8 Inquiries and complaints.

(a) Inquiries or complaints about the Federal crime insurance program should initially be directed to the property owner's agent or broker, or to the servicing company designated for the area in which the premises are located.

(b) Inquiries or complaints with respect to which satisfactory information or action cannot be obtained through local sources, and general or legal inquiries pertaining to the nature of the program, may be addressed to the Federal Insurance Administrator, Federal Emergency Management Agency, Washington, DC.

[36 FR 24771, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 47 FR 13150, Mar. 29, 1982]

§ 81.9 Penalties for false statements.

All information provided by an applicant or a claimant on any form approved by the insurer, including representations as to the date on which such form is signed, shall be deemed material to the issuance of the policy applied for and to the disposition of claims submitted thereunder. Any false statement, misrepresentation, or concealment in the execution or submission of such forms, or in any writing or document knowingly submitted by the applicant or claimant in connection therewith, may result in his prosecution by the United States for fraud under 18 U.S.C. 1001, subject to a fine of not more than $10,000 or imprisonment of not more than 5 years, or both.

§ 81.10 Nondiscrimination.

The Federal Crime Insurance Program and all policies issued or serviced thereunder are subject to applicable Federal regulations and requirements issued from time to time pursuant thereto. No persons shall be excluded from participation in, denied the benefits of, or subjected to discrimination under the Program on the grounds of race, color, sex, marital status, age or national origin. Any complaint or information concerning the existence of any such unlawful discrimination in any matter within the purview of this subchapter should be referred to the Administrator.

[45 FR 41951, June 23, 1980]

PART 82—PROTECTIVE DEVICE REQUIREMENTS

Subpart A—General

Sec.

82.1 Definitions.
82.2 Purpose of protective device requirements.
82.3 Classification of properties.
82.4 Inspection of residential premises following losses.
82.5 Inspection of commercial premises.

Subpart B—Residential Properties

82.21 Minimum standards for residences and apartments.

Subpart C—Nonresidential Properties

82.31 Minimum standards for industrial and commercial properties.

Authority: 12 U.S.C. 1747bbb *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

Source: 36 FR 24772, Dec. 22, 1971, unless otherwise noted. Redesignated at 44 FR 31177, May 31, 1979.

Subpart A—General

§ 82.1 Definitions.

As used in this subchapter, the term—

(a) "Baffle" means a piece of metal that covers the opening between a door and its frame at the area of penetration of the bolt or latch to deter the insertion of tools and prevent the exertion of pressure against the bolt or latch;

(b) "Central station, supervised service alarm system" means a silent alarm system that is constantly in operation, which signals upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises, at a private sentry or guard headquarters that is attended and monitored 24 hours a day, that dispatches guards to the protected premises immediately upon the activation of the alarm, that periodically checks the operation and effectiveness of the system, and that notifies law enforcement authorities as soon as the breach of the premises is confirmed;

(c) "Central Station, Supervised Alarm System (without guard dispatch)" means a silent alarm system that is constantly in operation, which signals upon any breach of a door, windows (including store front windows and unbarred skylights), or other accessible openings to the protected premises, at an office of the law enforcement authorities or at an office of an independent agency, located at a distance from the protected property, which has trained operators continually on duty twenty four (24) hours a day to receive signals and to notify law enforcement authorities as soon as any breach of the premises is confirmed.

(d) "Dead bolt" means a locking device using a fixed bolt that, when in locked position, cannot be retracted by a door knob or handle or other normal door opening device or by the application of force against the penetrating end of the bolt;

(e) "Dead latch" means a locking device, usually spring-operated, that incorporates a feature to render the latch rigid in its locked position and incapable of release by prying or by the turning of an outside door knob or handle or similar door opening device;

(f) "Dead lock" means a locking device incorporating a lock that cannot be pushed or retracted into a door or window by the use of tools inserted between the frame of the door or window and the door or window itself. Except as otherwise indicated, a dead lock may be equipped with a dead bolt or a dead latch;

(g) "Double cylinder dead bolt lock" means a deadbolt lock that can be released from its locked position only by a key, whether on the inside or the outside of the door;

(h) "Holdup Alarm" means a holdup alarm system that is constantly in operation and signals at an office of law enforcement authorities or at an office of an independent agency located away from the protected property. Accessible, but inconspicuous, buttons at hand or foot or knee levels are placed throughout the premises. An insured may, at his option, cause the alarm to sound on the premises, in addition to the remote location.

(i) "Local alarm system" means an alarm system that signals loudly at the premises by means of one or more tamper-protected sounding devices upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises;

(j) "Silent alarm system" means an alarm system that signals at a location other than the location where it is installed upon any breach of a door, window (including storefront windows and unbarred skylights), or other accessible opening to the protected premises; and

(k) "Throw," when used in the context of a locking device, means the distance that its bolt or latch protrudes from the body of the device when the bolt or latch is in a locked position.

(l) "Safe" is a non-portable money storage compartment which is reinforced with a minimum of ¼ inch solid steel plate throughout, with the exception of the door, which must be at least one inch thick solid steel plate and equipped with a combination lock, which is an integral part of the door.

(m) "Safe or Vault Alarm" means a safe or vault protected by a central station or silent alarm supervised system.

[36 FR 24772, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 47 FR 19349, May 5, 1982; 50 FR 16495, Apr. 26, 1985; 53 FR 11276, Apr. 6, 1988]

§ 82.2 Purpose of protective device requirements.

(a) Section 1231(b) of the Act (12 U.S.C. 1749bbb-10a(b)) provides that no Federal crime insurance shall be made available to a property which is deemed by the insurer to be uninsurable or to a property with respect to which reasonable protective measures to prevent loss, consistent with standards established by the insurer, have not been adopted.

(b) It is the intention of the insurer to require at the inception of the program only those protective devices generally in use or readily available for particular types and classes of properties at the present time. As the program progresses, however, the insurer proposes to amend these requirements from time to time to enforce a higher and more effective standard of protection against ordinary property crimes than now exists. Such revised requirements are not expected to be published more often than once a year and will be applicable only to crime insurance policies issued or renewed after their effective date.

(c) Protective device standards that impose less-stringent or optional alternate requirements upon applicants and insured, as well as clarifications of existing standards, may be published at any time and shall be applicable both to new policies and to renewals and, at the option of the insured, to crime insurance policies already in force.

§ 82.3 Classification of properties.

The protective devices required under this part fall into two broad categories, residential and commercial. Requirements for residential properties are expected to remain relatively stable and are not likely to vary by classes. The protective devices required for commercial and industrial properties will vary greatly by the type of risk involved and will be changed periodically as experience and knowledge are gained under the program and from studies being undertaken by other public and private agencies.

§ 82.4 Inspection of residential premises following losses.

(a) Each residential applicant applying for Federal Crime Insurance shall be responsible for meeting the protective device requirements applicable to his premises. Any person who is doubtful as to whether the protective devices existing on his premises at the time of application meet such requirements should examine the descriptive materials and illustrations available from the servicing company and direct any specific questions to the servicing company.

(b) In addition insurance agents and brokers are expected to assist and advise prospective insureds concerning the protective device requirements for residential premises. However, no agent or broker shall be authorized to approve or disapprove on behalf of the insurer the adequacy of any required protective devices, and any representation to the contrary is false and shall be void.

(c) Upon receiving any notice of loss from an insured, the Administrator shall cause an inspection of the insured residential premises to be made in the course of the adjustment of the claim in order to determine whether the premises meets the protective device requirements of the program. If no inspection of the premises has previously been made and if the first such inspection reveals that the insured premises does not comply with the applicable protective device requirements, any first loss covered by the terms of the insurance policy, involving robbery or a burglary evidenced by visible marks of forcible entry, will be paid irrespective of any deficiencies in the insured's compliance with the protective device requirements. However, the insured will be given thirty days from the date on which he is notified in writing of any deficiencies to correct such deficiencies. During that thirty day period, robbery or burglary losses covered by the terms of the insurance policy will continue to be paid irrespective of any deficiencies in the insured's compliance with the protective device requirements. Losses occuring more than thirty days after the date on which the insured has been notified in writing of the results of the inspection will be paid only if it is determined that a loss, covered by the terms of the insurance policy, did not result in whole or in part from a protective device deficiency of which the insured was previously placed on written notice.

[43 FR 4009, Jan. 31, 1978. Redesignated at 44 FR 31177, May 31, 1979]

§ 82.5 Inspection of commercial premises.

(a) All premises for which an application for commercial crime insurance against burglary losses is submitted shall be inspected by the servicing company to determine whether the premises comply with the applicable protective device requirements.

(b) Coverage under a commercial crime insurance policy indemnifying against burglary losses shall not commence unless it is determined that the premises sought to be insured comply with all applicable protective device requirements. *Provided*, That all commercial premises whose exterior doors and accessible openings are found upon inspection to be protected by central station supervised service alarm systems or silent alarm systems (as those systems are defined in paragraphs (b), (c), and (l) of § 82.1) shall not be required to comply with the provisions of paragraphs (b) and (e) of § 82.31 pertaining to the protection of those exterior doors and accessible openings by such devices as bars, grillwork, and other physical barriers. The benefit of this provision, therefore, applies also to comercial premises which, because of their particularly high risk inventories of merchandise continue to be required by paragraphs (f) (1) and (2) of § 82.31 to have exterior doors and accessible openings protected by specified types of alarm systems, namely, supervised service alarm systems for the highest risk inventories and silent alarm systems for less high risk inventories.

(c) An insured whose commercial premises is not one which is required by § 82.31 to be protected by any type of alarm system but who elects to utilize an alarm system may select particular accessible openings and exterior doors to be protected only by the alarm systems and may protect other accessible and exterior doors with the physical barriers specified in paragraphs (c) and (e) of § 82.31.

(d) Because the statement of annual gross receipts is a significant factor in the determination of the correct premium, the annual gross receipts figures (ventas netas for Puerto Rico) or the Total Income of the tax returned as derived from interest, rents, capital gains, etc., reported on the application or at the time of renewal shall be verified at the time of the adjustment of any loss. The applicant or insured shall at the time make available any necessary documentation to substantiate the annual gross receipts figure reported.

(e) The Administrator may in his discretion waive one or more protective device requirements with respect to any policy where he determines that compliance would be impractical and would impose a cost not reasonably commensurate with the protection derived. However, in the event of any loss contributed to in whole or in part by any such waiver, the Administrator may withdraw such waiver upon mailing to the insured thirty days written notices of withdrawal. Any loss occurring after thirty days from the day of the mailing of said notice shall not be paid unless the insured's premises shall be in compliance with the previously waived protective device requirement at the time of such loss. The Administrator may also in his or her discretion determine that the frequency and/or severity of occurrences of loss experienced under any policy issued under the provision of paragraphs (b) and (c) of this section, requires that as a condition of continuation of coverage on renewal such policy the premises insured thereunder be protected by one or more of the protective devices described in paragraphs (a), (b), (c), (d), (e), (f)(1), (2), (3), and (4) of this section for applicable points of entry for incurred losses and also may require as a condition of renewal, higher deductibles not to exceed $3,000 for each loss occurrence.

(f) If, during the course of adjusting a claim submitted by an insured, an adjuster or other investigator discovers a protective device deficiency, not previously discovered and noted by an investigator, with respect to a device, described in any of paragraphs (a), (b), (c), (d), (e), and (f) of § 82.31, which the insured was required to have installed as a condition of eligibility for insurance coverage, the deficiency shall be made known to the insured who will be given thirty days after his receipt of such written notice within which to remedy the deficiency. During that thirty-day period, burglary losses covered by the terms of the policy will be paid irrespective of the deficiency. Burglary losses occurring more than thirty days after the date on which an insured is notified of the deficiency will be paid only if it is determined that the deficiency was corrected prior to the loss. However, no loss shall be payable at any time if caused in whole or in part by a protective device deficiency with respect to any device which the insured was required to have installed as a condition of eligibility, and which device was found to be present at the time of a previous investigation, if the deficiency resulted from the inoperability, alteration, removal or disconnection of said required protective device by or with the knowledge of the insured, subsequent to the previous inspection of the premises.

(g) An insured who has knowledge of an inoperability or other malfunction of a protective device which the insured was required to have installed as a condition of eligibility for insurance coverage shall immediately notify the Administrator of such deficiency in writing, or by use of the servicing company's toll-free telephone number 800-638-8780. If the insured complies with such emergency protective measures as the Administrator may specify following reciept of such notice, and if the deficiency is corrected within the time specified by the Administrator, no loss of coverage will result during the period of inoperability or malfunction.

(h) If an insured cancels a commercial policy because of a move to a new premises and applies for insurance at the new premises, there shall be a mandatory inspection to determine compliance with protective device requirements at the new location. However, protective device requirements shall not be applicable to the new premises until 30 days after the insured's receipt of written notice of either compliance or of a deficiency, thus giving the insured time in which to remedy the deficiency. Burglary losses occurring more than 30 days after the date on which the insured received notice of a deficiency will be paid only if it is determined that the deficiency was corrected prior to the loss.

(i) If an applicant occupies a premises jointly with other businesses, and there exists no physical barrier separating the business of the applicant from the other businesses, the applicant may still obtain insurance coverage provided that the exterior boundaries of the premises that enclose the business of the applicant and the other businesses are protected in accordance with the protective device requirements applicable to the classification governing the applicant's business. In such a case the applicant, as an insured, will be responsible for the continued existence and maintenance and functioning of the required protective devices. For purposes of the burglary insurance coverage, the premises to which there must be forcible signs of entry is the overall premises confining the business of the applicant and the other businesses. As noted in § 83.22, the maximum limit of coverage which consists of $15,000 may not be increased by insuring several departments of a single business or institution at one premises as separate premises and this paragraph does not supersede § 83.22.

[43 FR 4008, Jan. 31, 1978. Redesignated at 44 FR 31177, May 31, 1979 and amended at 47 FR 19349, May 5, 1982; 50 FR 16495, Apr. 26, 1985; 52 FR 30685, Aug. 17, 1987]

Subpart B—Residential Properties

§ 82.21 Minimum standards for residences and apartments.

In order to be eligible for Federal crime insurance, residential premises shall meet the following minimum standards:

(a) Each exterior doorway or doorway leading to garage areas, public hallways, terraces, balconies, or other areas affording easy access to the insured premises, shall be protected by a door which, if not a sliding door, shall be equipped with a dead lock using either an interlocking vertical bolt and striker, or a minimum ½-inch throw dead bolt, or a minimum ½-inch throw self-locking dead latch.

(b) All sliding doors, first floor and basement windows, and windows opening onto stairways, fire escapes, porches, terraces, balconies, or other areas affording easy access to the premises, shall be equipped with a locking device of any kind.

Subpart C—Nonresidential Properties

§ 82.31 Minimum standards for industrial and commercial properties.

In order to be eligible for Federal crime insurance, a nonresidential premises shall meet the following minimum standards:

(a) Except for doorways that are completely protected during nonbusiness hours by heavy duty overhead doors or metal security screens or the equivalent, each exterior door shall be equipped with either a heavy-duty dead lock (utilizing either interlocking vertical bolts and striker or else a 1-inch dead bolt that extends at least one-half inch into the frame of the door), or a heavy-duty padlock (with casehardened steel shackle and five-pin tumbler operation), or a comparable dead lock or padlock that provides equivalent protection. Where applicable fire and safety laws permit their use, double-cylinder locks are recommended.

(b) All exterior grate or grill-type doors, overhead doors, and security screens or grillwork (unless permanently installed) shall be equipped with locks that meet the requirements of paragraph (a) of this section.

(c) Except for doorways that are completely protected during nonbusiness hours by heavy-duty overhead doors or metal security screens or the equivalent, each exterior door shall be of heavy gauge metal, tempered glass, or solid wood core (not less than 1⅜ inches thick) construction, or else shall be covered with metal sheeting of at least 16 gauge (¹⁄₁₆-inch thick) or its equivalent, or with grillwork, to give like protection;

(d) Outside hinge pins shall be welded, flanged, or screw-secured, nonremovable pins unless the hinge is constructed so as to provide equivalent protection against the removal of the door to which it is attached when the door is in the closed position.

(e) Except where expressly prohibited by applicable laws pertaining to fire protection, accessible openings exceeding 96 square inches in area and 6 inches in the smallest dimension (other than storefront display windows), shall either meet the standards for exterior doors, or else shall be protected by inside or outside iron bars one-half inch in diameter, or by flat steel material, spaced not more than 5 inches apart and securely fastened, or by iron or steel grills of ⅛-inch material of 2-inch mesh, securely fastened, or by other heavy-duty material that provides equivalent protection. The requirements of this paragraph shall not apply to skylights protected by alarm systems. For the purposes of this paragraph, an "accessible opening" is an opening such as a window, transom, skylight, or vent, regardless of whether it is made to be opened, which exceeds 96 square inches in area and 6 inches in the smallest dimension, any part of which is—

(1) 18 feet or less above either the ground or the roof of an adjoining building, or

(2) 14 feet or less from directly or diagonally opposite windows, fire escapes, or roofs, or

(3) 3 feet or less from openings, fire escapes, etc., in or projecting from the same wall or an adjacent wall leading to other premises.

(f) The following types of establishments whose inventories pose a particularly serious risk shall, as a minimum, in addition to the requirements of paragraphs (a), (b), and (d) of this section be protected by the type of alarm system indicated. If the system specified in paragraphs (f)(1) and (f)(2) of this section is not available in the community in which the premises are located, the type of system specified in paragraph (f)(3) of this section shall be permitted. In addition to, but not in place of, any central station supervised alarm system or silent alarm system required under paragraphs (f)(1), (2), and (3) of this section, an insured may also utilize a local alarm system.

(1) Central Station (with Guard dispatch) supervised service alarm system shall be required for the following businesses:

(i) Beer/Wine—Wholesale

(ii) Boutiques

(iii) Cameras/Photo Supplies/Film Processing—Wholesale/Retail/Mfg.

(iv) Clothing Apparel/Children's (12 and under)—Wholesale/Retail

(v) Clothing Manufacturers/Tailoring

(vi) Clothing/Mens' (age 12 and over)—Wholesale/Retail

(vii) Clothing/Womens' (age 12 and over)—Wholesale/Retail

(viii) Drug Stores and Druggist Sundries

(ix) Drugs—Wholesale

(x) Electrical Appliance/Apparatus/Parts—Wholesale/Retail/Mfg.

(xi) Food Stuffs—Wholesale

(xii) Gasoline Service Station/Fuel Dealers

(xiii) Gift Stores (Costume Jewelry $25.00—Wholesale limit)—Retail/Wholesale/Mfg.

(xiv) Hobby Shops/Toys/Novelty

(xv) Jewelry—Retail/Wholesale/Mfg./Storage

(xvi) Leather Products—Wholesale/Retail/Mfg.

(xvii) Liquor Sales—Retail

(xviii) Pawnbrokers

(xix) Precious Metals/Electroplating—Mfg./Wholesale/Retail

(xx) Radio/TV/Stereo/Electronic Equipment/Computer—Wholesale

(xxi) Record Shops/Video Stores

(xxii) Savings/Loans/Banks and other Financial Institutions (excluding Check Cashing)

(xxiii) Shoe Stores—Wholesale/Retail/Mfg.

(xxiv) Tobacco—Wholesale

(xxv) Used Clothing/Shoe Repair/Thrift Shops

(xxvi) Variety Stores/Department Stores

(2) Central Station (without Guard dispatch) supervised service alarm system shall be required for the following businesses:

(i) Antique Store

(ii) Art Supplies—Retail/Wholesale/Mfg.

(iii) Auto Parts (No Service)—Wholesale/Retail/Mfg.

(iv) Beauty & Health Supplies/Cosmetics—Wholesale/Retail/Mfg.

(v) Candy/Nut Stores—Retail/Wholesale

(vi) Dry Goods/Textiles/Serving Material—Wholesale/Retail/Mfg.

(vii) Furniture/Home Furnishing/Floor Covering/Upholstery—Wholesale/Retail/Mfg.

(viii) Furriers—Wholesale/Retail/Mfg./Storage

(ix) Grocery Stores/Delicatessen/Health Food Stores

(x) Guns/Ammunition—Wholesale/Retail/Mfg.

(xi) Hardware/Houseware—Wholesale/Retail/Mfg.

(xii) Liquor—Wholesale

(xiii) Meat/Poultry/Fish Dealers

(xiv) Music Stores/Instruments/Supplies—Wholesale/Retail/Mfg.

(xv) Motorbikes/Bicycles/Moped

(xvi) Pet Stores/Kennels—Supplies

(xvii) Precious Metals/Electroplating—Wholesale/Retail/Mfg.

(xviii) Sport Goods (General)—Wholesale/Retail/Mfg.

(xix) Tobacco Dealers—Retail

(xx) Wig Shops

(3) Silent alarm system shall be required for the following businesses:

(i) All Risks Not Otherwise Classified

(ii) Amusement Enterprises

(iii) Art Gallery

(iv) Beach Concession Stands/Supplies

(v) Billiard/Pool Parlors

(vi) Building Contractors—Material—Retail/Wholesale

(vii) Coin/Stamp Shop

(viii) Distributors—Variety/Non-Alcoholic Beverages

(ix) Dry Cleaners

(x) Fine Arts (Porcelain, Ivory, Oriental Rugs, Paintings, etc.)

(xi) Florist—Wholesale/Retail

(xii) Garages/Auto Repair/Body Shops

(xiii) Hotel/Motel/Rooming House/Apartments

(xiv) Industrial Material/Iron & Metal Work—Wholesale/Retail/Mfg.

(xv) Laundries

(xvi) Marine/Aircraft Materials—Sales/Service—Retail/Wholesale/Mfg.

(xvii) Medical (Doctors/Dentist, etc.) Supplies—Retail/Wholesale/Mfg.

(xviii) Office Supplies/Business Machines/Equipment—Retail/Wholesale/Mfg.

(xix) Restaurants

(xx) Schools (Profit) Day Care Centers/Studios

(xxi) Specialized Clothing (Sportwear/Lingerie/Accessories/etc.)—Wholesale/Retail/Mfg.

(xxii) Stationery/Books/Printing/Engraving/Paper/Plastic Products—Wholesale/Retail/Mfg.

(xxiii) Tavern/Bar/Lounge

(4) Local alarm system shall be required for the following businesses:

(i) Auto Parts (Sales/Service)—Wholesale/Retail/Mfg.

(ii) Beauty/Barber Shops

(iii) Check Cashing Agency/Money Exchange—Collectors

(iv) Disco/Dance Halls/Pavilions

(v) Donut/Pastry/Coffee/Ice Cream (Seated Service)

(vi) Fast Food/Bakery/Ice Cream (Carry Out)

(vii) Flea Markets/Auction Houses

(viii) Fruit/Vegetable/Newspaper Stands

(ix) Funeral Homes

(x) Golf and Other Sports Professionals

(xi) Health Clubs/Spas/Massage Parlors

(xii) Nursing Homes/Convalescent

(xiii) Parking Lots/Rental Cars/Carwash/Taxi Office

(xiv) Photographers Studio

(xv) Professional/Specialized Service (Lawyers/Accountants/Couriers/Housekeeping, etc.)

(xvi) Radio/TV/Stereo/Electronic Equipment/Computers (Service Only)

(xvii) Realty/Insurance/Travel/Employment (Agencies)

(xviii) Security/Locksmiths/Alarms—Retail/Wholesale/Mfg.

(xix) Vending Machines (Sales)—Retail/Wholesale/Mfg.

(g) The protective device requirements set forth in this section shall not apply to premises which are insured only under Option 2 against the peril of robbery only, as provided in paragraph (c) of § 83.25 of this chapter.

[36 FR 24772, Dec. 22, 1971, as amended at 37 FR 15298, July 29, 1972; 38 FR 4508, Feb. 15, 1973; 39 FR 14949, Apr. 29, 1974. Redesignated at 44 FR 31177, May 31, 1979, and amended at 50 FR 16495, Apr. 26, 1985; 52 FR 30685, Aug. 17, 1987]

PART 83—COVERAGES, RATES, AND PRESCRIBED POLICY FORMS

Subpart A—Residential Crime Insurance Coverage

Sec.

83.1 Description of residential coverage.
83.2 Limits of residential coverage.
83.3 Amount of residential policy deductible.
83.4 Residential crime insurance rates.
83.5 Required residential policy form.

Subpart B—Commercial Crime Insurance Coverage

83.21 Description of commercial coverage.
83.22 Limits of coverage and number of applications required.
83.23 Amount of commercial policy deductible.
83.24 Classification of commercial risks.
83.24a Gross receipts.
83.25 Commercial crime insurance rates.
83.25a Application and date of commencement of coverage.
83.26 Required commercial policy form.

AUTHORITY: 12 U.S.C. 1749bbb *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

Subpart A—Residential Crime Insurance Coverage

§ 83.1 Description of residential coverage.

(a) The purpose of this § 83.1 is descriptive only, and it shall be subject to the express terms and conditions of the policy form prescribed in § 83.5.

(b) The initial policy issued by the insurer for residential properties shall be known as the residential crime insurance policy. Subject to its terms, the policy reimburses an insured for loss from burglary and larceny incident thereto, robbery (including observed theft), or attempt thereat, of personal property from the premises or in the presence of an insured, and for damage to the premises caused by any such attempt. It also covers damage to the interior of the part of the building occupied by the named insured's household at the described premises, and to the insured property both therein and away from the premises, caused by vandalism or malicious mischief: *Provided*, That with respect to damage to the building an insured is the owner thereof or is liable for such damage. The policy is subject to the exclusions set forth therein.

(c) The residential crime insurance policy shall be written only for an individual or for a single family or household with respect to a one to four family house or separate living quarters in an apartment building or dormitory. Premises in hotels (other than residence hotels where normal occupancy exceeds 6 months in duration) and premises within residential properties used in whole or in part for business purposes are not eligible for coverage under the residential policy. A mobile home used as a residence may be insured on a residential application fórm provided the mobile home has been rendered immobile on a permanent foundation and anchored to resist flotation or lateral movement. A residential premises or a portion thereof owned or leased by a business, corporate or otherwise, may not be insured by said business under a residental policy. A model home held for eventual sale may not be insured under a residential policy. A storeroom used for temporary storage of personal property not pertaining to a business may be insured under a residential policy, provided that the storage area is surrounded by physical barriers which separate it from other storage areas available to other persons and that the storage area utilized by the insured complies with the protective device requirements applicable to residential premises.

[36 FR 24774, Dec. 22, 1971, as amended at 37 FR 15298, July 29, 1972. Redesignated at 44 FR 31177, May 31, 1979 and amended at 47 FR 19350, May 5, 1982]

§ 83.2 Limits of residential coverage.

The residential policy may be written in amounts not less than $1,000 and not in excess of $10,000 for each insurable premises. An insurable premises is defined as a physically separate area occupied for residential purposes by one or more persons who are permanent members of a single household. The $10,000 limit of coverage for each insurable premises may not be increased by subdividing the premises shared by members of a common household. Any amount of insurance or fraction thereof, above a specified limit shall be charged the applicable rate for the next higher limit of coverage. Specified limits of coverage are set forth in § 83.4.

[47 FR 19350, May 5, 1982]

§ 83.3 Amount of residential policy deductible.

The residential crime insurance policy shall be subject to a deductible in the amount of $100 for each loss occurrence, or 5 percent of the gross amount of the loss, whichever is greater. The face amount of coverage specified in the policy is not reduced by the application of this deductible. Thus, if an insured having a $5,000 policy incurs a $5,000 covered loss, he would receive $4,750. If the loss were $6,000, he would receive the full $5,000.

[39 FR 2361, Jan. 21, 1974. Redesignated at 44 FR 31177, May 31, 1979 and amended at 47 FR 19350, May 5, 1982]

§ 83.4 Residential crime insurance rates.

The specific limits of coverage for applicable annual premiums for residential crime insurance coverage are revised to read as follows:

	Annual premium
Policy limits:	
$1,000	$32
2,000	42
3,000	52
4,000	62
5,000	74
6,000	84
7,000	94
8,000	104
9,000	116
10,000	126

[53 FR 11276, Apr. 6, 1988]

§ 83.5 Required residential policy form.

The following shall constitute the policy form for the residential crime insurance policy and no other policy form shall be used. Coverage will commence at 12:00 noon following the date of a U.S. Post Office affixed postmark or proof of Certified or Registered mailing. In the absence of such postmark or other proof sufficient to substantiate the date of mailing, coverage will be effective at 12:00 noon following receipt by the servicing company, unless a later date is specified in the application.

(a) Owner's or tenant's Residential Crime Insurance Policy form:

FEDERAL INSURANCE ADMINISTRATION

RESIDENTIAL CRIME INSURANCE POLICY

The Federal Insurance Administrator, herein called the Insurer, agrees with the insured, named in the Application made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Application, and subject to (1) the provisions of title VI of Pub. L. 91-609 (12 U.S.C. 1749bbb-10a, et seq.) and Subchapter B, Chapter I, Title 44 of the Code of Federal Regulations (44 CFR 80-84), and (2) the limits of liability, exclusions, conditions, deductibles, and other terms of this Policy with respect to the following criminal acts:

Insuring Agreements

I. *Loss by burglary and larceny or robbery, including observed theft.* (a) To pay for loss by burglary and larceny incident thereto, or robbery, including observed theft, of all personal property from the premises or in the presence of an insured.

II. *Damage.* To pay for damage to the premises and to the insured property by burglary or robbery, including observed theft, or attempt thereat, and for damage to the interior of that portion of any building occupied by the named insured's household at the premises and to the insured property therein or away from the premises by vandalism or malicious mischief which occurs during a burglary or robbery, provided that with respect to damage to the building an insured is the owner thereof or is liable for repairing such damage.

With respect to loss occurring at any part of the premises not occupied exclusively by the named insured's household, this Insuring Agreement applies only to property owned or used by an insured.

III. *Application of insurance while the premises are rented to another.* Such insurance as is afforded for loss at or damage to the premises applies while the premises are rented by an insured owner or tenant to another for use as a private residence only, subject to the following provisions:

1. The insurance applies only with respect to property owned by an insured.

2. The insurance does not apply (a) to money, securities, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, and articles of gold or platinum, furs, fine arts, antiques, coin or stamp collections, or (b) to loss caused by a tenant of such premises or any of his employees or members of his household.

IV. *Application of insurance while the premises are occupied by three or more persons not related to the named insured.* Such insurance as is afforded for loss at or damage to the premises applies while the premises are occupied by three or more persons not related to the named insured owner or tenant, subject to the following provisions:

1. The insurance applies only with respect to property owned by the named insured.

2. The insurance does not apply (a) to money, securities; gems, precious and semiprecious stones, gold or platinum (other than jewelry); antiques, coin or stamp collections; or (b) to loss caused by a tenant of such premises or any of his employees or members of his household.

3. Under this insuring agreement, the actual cash value of any one article of jewelry (including watches) shall be deemed not to exceed $50.

V. *Removal to other premises.* If the named insured moves to other premises which he intends to occupy permanently as his private residence, such insurance as it afforded for loss at or damage to the premises designated in the Application applies subject to the following provisions:

1. During the moving, for a period not to exceed thirty (30) days, the insurance applies at the premises and at the other premises and to the insured property while in transit.

2. Upon completion of the moving the insurance applies at the other premises and no longer applies at the original premises: *Provided,* That all coverage under this policy shall cease at the end of the thirty (30) day period, and the policy shall be deemed canceled by the Insurer as of such date.

VI. *Policy period, territory.* This policy applies only to loss which occurs during the policy period within a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the territories and possessions of the United States and the Trust Territory of the Pacific Islands as defined in 12 U.S.C. 1749bbb-2 and set forth in 44 CFR 55.1.

EXCLUSIONS

This Policy does not apply:

(a) To loss committed by an insured;

(b) To loss of (1) any aircraft, motor vehicle (other than motorized equipment designed for service purposes and not licensed for highway use), trailer, boat or the equipment thereof, (2) articles carried or held as samples or for sale or for delivery after sale, or (3) animals, fish or birds;

(c) To loss sustained by a person not related to an insured who pays board or rent to an insured;

(d) To loss of (1) property pertaining to a business of an insured;

(e) To loss if the premises are not protected in accordance with the regulations of the Federal Insurance Administration, as published at the time of the inception of the then current term of the Policy in Crime Insurance Program 44 CFR Part 80 et seq.

Conditions

1. *Definitions*—

(a) *Named insured.* "Named Insured" means the insured named in the Application. "Insured" means the named insured and any person while a permanent member of the insured's household, including a residence employee, but not including a tenant who is not related to the named insured, the named insured's spouse, or any other permanent member of the named insured's household, and who pays board or rent to the named insured.

(b) *Premises.* "Premises" of paragraph 1 means the premises designated in the application and includes garages and other outbuildings incidental thereto.

(c) *Burglary.* "Burglary" or "burglary and larceny incident thereto" mean the felonious abstraction of insured property from within the premises by a person making felonious entry.

(d) *Robbery.* "Robbery" or "robbery, including observed theft," means the taking of insured property (1) by violence inflicted on an insured; (2) by putting him in fear of violence; (3) by any other overt felonious act committed in his presence and of which he was actually cognizant, provided such other act is not committed by an insured; or (4) from the person or direct care and custody of an insured who has been killed or rendered unconscious.

(e) *Money.* "Money" means currency, coins, bank notes, and bullion.

(f) *Securities.* "Securities" mean all negotiable and nonnegotiable instruments or contracts representing either money or other property and includes revenue and other stamps in current use, tokens, and tickets, but does not include money.

(g) *Business.* "Business" includes trade, profession, or occupation.

(h) *Loss.* "Loss" includes damage.

(i) *Residence employee.* "Residence employee" means an employee of an insured who performs duties in connection with the maintenance or use of the residence premises, including household or domestic service.

2. *Interests covered.* The insurance does not apply to the interest in insured property of any person or organization, unless included in the named insured's proof of loss.

3. *Limits of liability; settlement options.* The Insurer shall not be liable on account of any loss unless the amount of such loss shall exceed the amount of the deductible described in the Application which is made a part of this Policy and the Insurer shall then be liable only for such excess over and above the deductible, subject to and within the limit of insurance covered by the Policy. The limit of the Insurer's liability for loss or damage in any one occurrence shall not exceed the applicable limit of insurance stated in the Application, nor what it would cost at the time of loss to repair or replace the property with other of like kind and quality, nor the actual cash value thereof at the time of loss: Provided, however, that the limit of the insurer's liability for loss of money is $200 and for loss of securities is $500, and for loss of jewelry, including without limitation, watches, necklaces, bracelets, rings, gems, precious and semi-precious stones, and articles of gold, silver or platinum, including flatware and holloware, furs, fine arts, antiques, coin or stamp collections is $500 for any one article and $1500 in the aggregate per occurrence.

If there is a loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

The applicable limit of insurance stated in the application is the total limit of the Insurer's liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence.

All loss incidental to an actual or attempted fraudulent, dishonest or criminal act or series of related acts at the premises, whether committed by one or more persons, shall be deemed to arise out of one occurrence.

The Insurer may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the named insured or the owner thereof. Any property so paid for or replaced shall become the property of the Insurer. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Insurer, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

4. *Insured's duties when loss occurs.* Upon knowledge of loss or of an occurrence which may give rise to a claim for loss, the insured shall (a) give notice thereof as soon as practicable to law enforcement authorities and to the Insurer through its authorized agent and (b) file detailed proof of loss, duly sworn to, with the Insurer through its authorized agent within sixty (60) days after the discovery of loss unless such time is extended by the Federal Insurance Administrator in writing. The administrator may, in his/her discretion, waive the requirement that the proof of loss be sworn to. Upon the insurer's request, the insured and every claimant hereunder shall submit to examination by the insurer, subscribe the same under penalty of 18 U.S.C. 1001 pertaining to fraud and false representation, and produce all pertinent records, all at such reasonable times and places as shall be designated, and shall cooperate in all matters pertaining to loss or claims with respect thereto. The insured shall as a condition of continued coverage take reasonable action immediately following the discovery of a loss to protect the premises from further loss.

5. *Other insurance.* If there is any other valid and collectible insurance which would apply in the absence of this Policy, the insurance under this Policy shall apply only as excess insurance over such other insurance; provided, that the insurance shall not apply: (a) To property which is separately described and enumerated and specifically insured in whole or in part by any other insurance; or (b) to property otherwise insured unless such property is owned by an insured.

6. *No benefit to bailee.* The insurance afforded by this Policy shall not inure directly or indirectly to the benefit of any carrier or bailee.

7. *Appraisal.* If the named insured and the Insurer fail to agree as to the amount of loss each shall, on the written demand of either made within sixty (60) days after re-

ceipt of proof of loss by the Insurer, appoint a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place within thirty (30) days after the two appraisers are appointed. If the appraisers fail to agree, they shall jointly select a competent and disinterested third appraiser and submit the question to him within fifteen (15) days thereafter. The first two appraisers shall state separately the actual cash value at time of loss and the amount of the loss. Subsequent agreement in writing by any two of the three appraisers within thirty (30) days after the third appraiser was selected shall be considered by the Insurer in determining the amount of the loss but shall not be considered binding upon him and shall not be admissible as such in court. The named insured and the Insurer shall each pay its chosen appraiser and shall bear equally the expenses of the third appraiser and the other expenses of appraisal.

The Insurer shall not be held to have waived any of its rights such as, without limitation, the right to deny liability under the Policy by any act relating to appraisal.

8. *Action against insurer.* No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this Policy, nor until ninety (90) days after the required proofs of loss have been filed with the Insurer, nor at all unless commenced within 2 years from the date when the insured first has knowledge of the loss and within 1 year after the date upon which the claimant received written notice of disallowance or partial disallowance of the claim. Any such action shall be brought in a U.S. district court, as required by 12 U.S.C. 1749bbb-11.

9. *Subrogation.* In the event of any payment under this Policy, the Insurer shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

10. *Changes.* Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Insurer from asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or changed, except by endorsement issued to form a part of this Policy, as approved by the Federal Insurance Administrator.

11. *Cancellation.* This Policy may be canceled by the named insured by surrender thereof to the Insurer or any of its authorized agents or by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective. The grounds for cancellation of coverage by the Insurer shall be limited to those set forth in Subchapter B, Parts 80 et seq., Chapter I, Title 44 of the Code of Federal Regulations. Except as otherwise provided by such regulations and by Insuring Agreement V(2), notice of cancellation by the Insurer shall be mailed to the named insured at the address shown in this Policy, stating when not less than thirty (30) days thereafter such cancellation shall be effective. The premium due notice for installment or renewal premiums is issued to notify the insured that the policy will be cancelled or will expire, as appropriate, unless the insured pays the premium in sufficient time for it to be received by the insurer, or postmarked by the United States Postal Service, on or before the due date. The mailing of any premium due notice, cancellation notice, or any other notice required by the policy, to the mailing address shown on the application or policy shall be conclusive evidence of notice to the insured. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date of cancellation stated in the notice shall become the end of the Policy period. Delivery of such written notice either by the named insured or by the Insurer shall be equivalent to mailing.

In the event of cancellation, earned premium shall be computed in accordance with the customary short rate table and procedure, unless otherwise specifically provided in said regulations issued by the Insurer. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

12. *Assignment.* Assignment of interest under this Policy shall not bind the Insurer until its consent is endorsed hereon; if, however, the named insured shall die, this Policy shall cover the named insured's spouse, if a resident of the same household at the time of such death, and legal representative as named insured: *Provided,* That notice of cancellation addressed to the insured named in the Application and mailed to the address shown in this Policy shall be sufficient notice to effect cancellation of this Policy. If the legal representative of the named insured is not a person who was a permanent member of the named insured's household at the time of the death of the named insured, this Policy shall apply as it applied prior to such death but shall not apply to loss of property owned or used by such legal representative, a member of his household or a residence employee thereof, unless such loss occurs at a part of the premises occupied exclusively by said named insured's household.

13. *Declarations.* By signing the Application or by acceptance of this Policy the named insured certifies and agrees, under penalty of Federal law dealing with fraud and false representation (18 U.S.C. 1001), that the statements in the Application are his agreements and representations, that this Policy is issued in reliance upon the truth of such representations, that he is aware of the applicability of the Regulations issued by the Insurer, and that this Policy and said regulations embody all agreements existing between himself and the Insurer or any of its agents relating to this insurance.

In witness whereof, the Federal Insurance Administration has accepted the declarations of the Insured set forth in the Application and has caused this Policy to be issued.

_____________________________,

Federal Insurance Administrator.

(b) Such endorsements to the owner's or tenant's Residential Crime Insurance Policy forms as the insurer may approve.

[36 FR 24774, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979, and amended at 45 FR 41951, 41952, June 23, 1980; 48 FR 19371, Apr. 29, 1983; 49 FR 43472, Oct. 29, 1984; 52 FR 30686, Aug. 17, 1987]

Subpart B—Commercial Crime Insurance Coverage

§ 83.21 Description of commercial coverage.

(a) The purpose of this § 83.21 is descriptive only, and it shall be subject to the express terms and conditions of the policy form prescribed in § 83.26.

(b) The initial policy issued by the insurer for commercial properties shall be known as the Commerical Crime Insurance Policy. Subject to its terms, the policy reimburses an insured for loss from robbery inside the premises, robbery outside the premises (up to a limit of $5,000 unless an armed guard accompanies the insured's messenger), the wrongful taking of insured property by compelling an insured to admit a person into the premises, safe burglary and larceny incident thereto (up to a limit of $5,000 unless the insured property is in a Class E safe anchored to the floor), theft observed by the insured, burglary and larceny incident thereto, robbery of a watchman (not to exceed $50 for any one article of jewelry), and damage to the premises (of which t insured is owner or for which the i sured is liable) as a result of any of th foregoing. The policy is subject to th exclusions set forth therein.

(c) The commercial crime insurance policy may be written for any industrial, commercial, nonprofit, or public property in accordance with the risk classifications set forth in § 83.24 and within the limits of coverage set forth in § 83.22, subject to the applicable requirements of this subchapter, such as the requirement for adequate protective devices set forth in Subpart C of Part 82 of this chapter.

(d) Certain portions of the materials contained in the sections that follow are based upon the Burglary Insurance Manual issued by the Insurance Services Office, 160 Water Street, New York, NY 10038, and are being reproduced in these regulations and in the related commercial crime insurance manual with the permission of the copyright owner.

[36 FR 24774, Dec. 22, 1971. Redesignated at 44 FR 31177, May 31, 1979 and amended at 52 FR 30686, Aug. 17, 1987]

§ 83.22 Limits of coverage and number of applications required.

The Commercial Crime Insurance Policy may be written in amounts not less than $1,000 and not in excess of $15,000 for each insured premises. The maximum limit may not be increased (a) by insuring several departments of a single business or institution at one insurable premises as separate premises, or (b) by establishing separate businesses for different portions of business operations having a common majority ownership which are located at one insurable premises. Each $1,000 of insurance or fraction thereof shall be charged the applicable rate for the full $1,000 of insurance coverage. Insurable premises is defined as one premises or portion thereof utilized for the purpose of conducting the business of the insured. Two or more buildings which are adjoining and have a common connecting door or passageway are considered one building and should be included in one application. Multiple rooms or floors within one building are considered one premises and should be specifically enumerated on one application. Physically separate buildings or portions thereof must be covered on separate applications using the appropriate IRS number, with a different suffix on each application, in order to identify multiple premises of one business. The commercial policy form must be used by a business for residential properties owned or leased by said business, incorporated or otherwise and for model homes. Such risks must meet commercial protective device requirements. If an insured shares a premises with one or more other businesses but there is no physical barrier meeting protective device requirements to separate the business, the insured is entitled to coverage with limitations as described in §§ 82.5(i) and 83.22.

[47 FR 19350, May 5, 1982]

§ 83.23 Amount of commercial policy deductible.

(a) The Commercial Crime Insurance Policy for industrial and commercial risks shall be subject to a deductible in the following amounts for each loss occurrence or 5 percent of the gross amount of the loss, whichever is greater, in accordance with the following categories of annual gross receipts (or operating budget, if applicable):

Less than $299,999	$250
$300,000 to $499,999	350
$500,000 and above	500

(b) The Commercial Crime Insurance Policy for non-profit or public property risks shall be subject to a deductible in the amount of $250 for each loss occurrence or 5 percent of the amount of loss, whichever is greater.

(c) Higher deductibles, percentage participation clauses and other underwriting devices may be employed by the insurer to meet special problems of insurability.

[47 FR 19351, May 5, 1982, as amended at 49 FR 43472, Oct. 29, 1984]

§ 83.24 Classification of commercial risks.

(a) The governing factor in determining the risk classification applicable to a particular premises is the kind of business conducted by the insured at that location. If there are several types of merchandise applicable to the risk, the highest classification of merchandise inventoried and held for sale governs. For example, a business with the following types of merchandise inventoried, 60% handbags and wigs, and 40% fine jewelry, shall be classified as Class 5 Fine Jewelry.

Any change in classification must be reported to the insurer through the servicing company.

(b) Individual concessionaires operating within a premises are classified according to the business or merchandise of the concessionaire.

(c) Warehouses and/or other storage areas shall take the classification of the merchandise or inventory comprising the majority value of the contents.

(d) The following business classifications shall be applicable to the Commercial Crime Insurance Policy:

CLASSIFICATION/ALARM LISTING

Premium		Description	Alarm type
Code	Class		
A1	3	All risks not otherwise classified.	3
02	2	Amusement enterprise	3
B1	3	Antique store	2
C1	3	Art gallery	3
33	4	Art supplies (retail, wholesale, mfg.).	2
D1	2	Auto parts—No service (retail, wholesale, mfg.).	2
03	2	Auto parts—sales/service (retail, wholesale, mfg.).	4
47	3	Beach concession stands/supplies.	3
32	2	Beauty/barber shops	4
41	3	Beauty & health supplies/cosmetic (retail, wholesale, mfg.).	2
C6	4	Beer/wine food (retail)	2
F1	6	Beer/wine (wholesale)	1
04	3	Billiard/pool parlors	3
70	6	Boutiques	1
05	2	Bowling lanes or centers/skating rinks.	0
34	2	Building contractors/materials (retail, wholesale, mfg.).	3
06	4	Cameras/photo supplies/film processing (retail, wholesale, mfg.).	1
43	3	Candy/nuts stores (retail, wholesale).	2
G1	4	Check cashing agency/money exchange/collectors.	4
01	1	Churches/charities/nonprofit org/public properties.	0
36	5	Clothing apparel/children 12 & under (retail, wholesale).	1
I1	6	Clothing manufacturer/tailoring	1

CLASSIFICATION/ALARM LISTING—Continued

Premium		Description	Alarm type
Code	Class		
22	6	Clothing/men's (age 12 & over) (retail, wholesale).	1
30	6	Clothing/women's (age 12 & over) (retail, wholesale).	1
07	3	Clubs (serving alcoholic beverages).	3
K1	3	Coin/stamp shop	3
08	2	Discos/dance halls/pavilions	4
50	2	Distributors—variety/non-alocholic beverages.	3
C5	3	Donut/pastry/coffee/ice cream shop (seated service).	4
09	4	Drug stores/druggist's sundries	1
L1	4	Drugs (wholesale)	1
10	4	Dry cleaners	3
38	3	Dry goods—textile/sewing material (retail, wholesale, mfg.).	2
11	4	Electrical appliances/apparatus/parts (retail, wholesale, mfg.).	1
E1	2	Fast food/bakery/donut/ice cream (carryout only).	4
39	2	Fine arts—porcelain/ivory/oriental rugs/paintings/etc.	3
78	2	Flea markets/auction houses	4
40	2	Florist (retail/wholesale)	3
M1	3	Food stuffs (wholesale)	1
N1	2	Fruit/vegetable/newspaper stands.	4
45	2	Funeral homes	4
42	2	Furniture/home furnishings/floor coverings/upholstery new or used (retail, wholesale, mfg.).	2
12	4	Furriers (retail, wholesale, mfg. storage).	2
13	3	Garages/auto repair/body shops.	3
14	4	Gasoline service station/fuel dealers.	1
44	3	Gift store/costume jewelry $25.00 wholesale limit (retail, wholesale, mfg.).	1
15	2	Golf & other professional sports shops.	4
16	4	Grocery stores/delicatessens/health food stores.	2
17	6	Guns/ammunition (retail, wholesale, mfg.).	2
46	3	Hardward/housewares (retail, wholesale, mfg.).	2
C2	2	Health clubs/spas/massage parlors.	4
80	3	Hobby shops/toys/novelty (retail, wholesale, mfg.).	1
48	2	Hotel/motel/rooming house/apartments.	3
01	2	Industrial materials/iron & metal work (retail, wholesale, mfg.).	3
18	6	Jewelry (retail, wholesale, mfg. Storage).	1
19	2	Laundries	3
52	3	Leather products (retail, wholesale, mfg.).	1
20	5	Liquor sales (retail)	1
P1	5	Liquor (wholesale)	2
37	3	Marine/aircraft materials—sales/service (retail, wholesale, mfg.).	3
21	2	Meat/poultry/fish dealers	2
54	2	Medical supplies (doctors, dentists, etc.) (retail, wholesale, mfg.).	3
Q1	3	Motorbikes/bicycles/mopeds	2
56	3	Music stores/instruments/supplies (retail, wholesale, mfg.).	2
35	2	Nursing/convalescent homes	4
C3	2	Office supplies/business machines/equipment (retail, wholesale, mfg.).	3
58	2	Parking lots/rental cars/carwash/taxi offices.	4
23	5	Pawn brokers	1
76	3	Pet stores/kennels/supplies	2
R1	2	Photographers studios	4
S1	6	Precious metals/electroplating (storage).	2
C8	5	Precious metals/electroplating (retail, wholesale, mfg.).	1
74	2	Professional/specialized services (lawyers, accountants, couriers, housekeeping, etc.).	4
24	6	Radio/TV/stereo/electronic equipment/computers (retail, wholesale, mfg.).	1
C4	2	Radio/TV/stereo/electronic equipment/computers (service only).	4
62	2	Realty/insurance/travel/employment agencies.	4
T1	4	Record shop/video stores	1
25	3	Restaurant/caterer	3
26	5	Savings & loans/banks & other financial institutions (excluding check cashing).	1
66	2	Schools (profit)/day care centers/studios.	3
64	2	Security/locksmiths/alarms (retail, wholesale, mfg.).	4
68	6	Shoe stores (retail, wholesale, mfg.).	1
H1	5	Specialized clothing—sportswear/lingerie/accessories/etc. (retail, wholesale, mfg.).	3
U1	5	Sport good/general (retail, wholesale, mfg.).	2
60	3	Stationery/books/printing/engraving/paper or plastic products (retail, wholesale, mfg.).	3
27	4	Tavern/bar/lounge	3
V1	2	Taxi/limousines (robbery only)	3
28	2	Theatres	3
29	4	Tobacco dealers (retail)	2
C9	3	Tobacco dealers (wholesale)	1
72	4	Used clothing/shoe repair/thrift shops.	1
W1	6	Variety stores/department stores.	1
X1	2	Vending machines (sales/rentals/mfg.).	4
Y1	5	Wig shops	2

[47 FR 19351, May 5, 1982, as amended at 50 FR 16496, Apr. 26, 1985; 52 FR 30686, Aug. 17, 1987]

§ 83.24a Gross receipts.

The annual gross receipts figure of a business is used as a significant factor in calculating the annual premium and for determining the deductible applicable to any loss. It is therefore material to the issuance of a policy and must be correctly stated. Misstatement of gross receipts at the time of application or any subsequent renewal will cause the policy to be voided and any claim denied. Gross receipts must be verified at the time of adjustment of any loss. Renewal payment of a Commercial Crime Insurance Policy will not be accepted and the policy renewed unless the current gross receipts figure is submitted with the premium payment. Failure to submit the gross receipts figure may result in a lapse of coverage. The following guidelines are applicable in determining the correct annual gross receipts figure to be reported.

(a) The annual gross receipts figure should be taken from the most recent annual Federal Income Tax Return (or comparable tax return in Puerto Rico and Virgin Islands) filed prior to the date of the application or renewal date. The figure is applicable to the policy for a period of one year and the policy can be changed in term to reduce or increase the premium because of a reduction or increase in gross receipts provided there are no incurred claims.

(b) A new business that has not as yet filed an annual Federal Income Tax Return (or ventas netas in Puerto Rico) shall insert an estimated projection of gross sales. However, an applicant is not considered to be a "new business" if any of the owners or officers of the business have been owners or officers of any similar business previously operated at the same address. In such a case the annual gross receipts figure as listed in the most recently filed income tax return of the former business should be used, if available. If such figure is not available, an estimate by the insured's accountant of the annual gross receipts reasonably anticipated during the first year of operation will be accepted.

(c) A non-profit or public entity that has no gross receipts (ventas netas in Puerto Rico) or whose annual operating budget exceeds the gross receipts shall report its operating budget rather than gross receipts.

(d) The gross receipts figure for a bank or other financial institution shall be the total income line of the tax return (ventas netas in Puerto Rico) as derived from dividends, interest, investment income, capital gains and other income. If several branches of one business are covered, the total income shall be divided equally among the branches insured.

(e) The gross receipts figure (ventas netas for Puerto Rico) for a real estate, property management or similar type of business shall be the "Total Income" line of the tax return as derived from interest, rents, capital gains, other, etc.

(f)(1) A warehouse operated as a distribution center for store(s) under common ownership and management shall report the total gross receipts of the store(s) it supplies. If a warehouse supplies more than one store, it shall report the sum of the gross receipts figures for all the stores it supplies. If more than one warehouse supplies one store, the gross receipts figure applicable to the store shall be apportioned among the warehouses according to the percentage the value of merchandise supplied by each warehouse bears to the total value of merchandise supplied.

(2) A warehouse operated as a distribution center for store(s) *not* under common ownership and management shall report the total gross receipts of the warehouse only, if the business is taxed on gross receipts.

(3) A warehouse operated as a distribution center for store(s) *not* under common ownership and management shall report the "Total Income" line of the tax return as derived from interest, rents, capital gains, other, etc., if the business is not taxed on gross receipts.

(g) If an insured has multiple premises as defined in § 83.22, the gross receipts of the total business shall be divided among the various locations in accordance with the percentage of the total gross receipts generated by each location.

(h) If an insured premises is regularly utilized as a collection center for performing accounting or bookkeeping functions with respect to the receipts delivered from two or more other premises, resulting in the accumulation of the combined receipts from such other premises at one location, the gross receipts for such location shall be determined by using the sum of the gross receipts amounts of all the other premises from which receipts are received. Further, if such insured premises is regularly utilized as a collection center at which there is accumulated money or property for distribution to one or more other insured premises, the gross receipts for such location shall be determined by using the sum of the gross receipt amounts of all the other insured premises to which distribution is made.

(i) Any questions regarding gross receipts or unique or unusual risk requiring special rating treatment shall be submitted to the servicing company listed in § 80.6 of this chapter for rate quotation.

[47 FR 19355, May 5, 1982, as amended at 50 FR 16497, Apr. 26, 1985]

§ 83.25 Commercial Crime Insurance Rates.

(a) Premium rates for Commercial Crime Insurance Policies for risks shall be determined by reference to the rate charts contained in paragraph (e) of this section. The annual gross receipts shall be determined in accordance with § 83.24(a).

(b) *Option 1*: An applicant may apply for insurance coverage under Insuring Agreements I, II, III, IV, and VII of the Commercial Policy dealing with Safe Burglary, Theft from Night Depository, and Burglary or Robbery of a Watchman, and Damage resulting from losses under Insuring Agreements I and VII only. Such coverage shall be referred to as Option 1.

(c) *Option 2*: An applicant may apply for insurance coverage under Insuring Agreements V, VI, VII, and VIII of the Commercial Policy dealing with Robbery and Observed Theft inside and outside the premises and Damage resulting from losses under Insuring Agreements V and VI only. Such coverage shall be referred to as Option 2.

(d) *Option 3*: An applicant may apply for insurance coverage under all of the Insuring Agreements I, II, III, IV, V, VI, and VII of the Commercial Crime Insurance Policy. This Option provides for uniform as well as varying limits of coverage under Option 1 and 2 but only in the same policy. Both Options 1 and 2 must be applied for at the same time. If one of the options has been selected the other option may be added upon a renewal or upon an endorsement of the original policy. A discount will be provided for Combined Coverage, Option 3.

(e) The following tables shall be used to determine rates for commercial risks.

Federal Crime Insurance Program, Commercial Crime Insurance Rates, Annual Premiums—Class 1

Gross Receipts

Amount of insurance	Less than $100,000		$100,000, $199,999		$200,000, $299,999		$300,000, $499,999		$500,000, $999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	82	112	124	168	124	168	164	222	204	276	326	442
2,000	156	200	234	298	234	298	310	396	386	496	618	794
3,000	228	288	342	430	342	430	456	574	570	716	912	1,144
4,000	296	366	446	548	446	548	594	730	742	912	1,184	1,458
5,000	350	414	528	622	528	622	702	828	876	1,034	1,402	1,652
6,000	370	454	554	680	554	680	740	908	924	1,132	1,476	1,810
7,000	384	484	576	724	576	724	768	966	958	1,206	1,534	1,928
8,000	400	512	596	768	596	768	796	1,022	994	1,276	1,590	2,046
9,000	404	522	604	784	604	784	804	1,044	1,004	1,302	1,606	2,084
10,000	412	542	618	812	618	812	824	1,082	1,026	1,350	1,644	2,160
11,000	434	590	654	886	654	886	870	1,180	1,086	1,474	1,738	2,358
12,000	454	630	680	946	680	946	908	1,258	1,132	1,570	1,812	2,514
13,000	464	648	696	974	696	974	926	1,298	1,156	1,620	1,850	2,592
14,000	468	660	702	990	702	990	934	1,316	1,168	1,644	1,870	2,632
15,000	472	668	710	1,004	710	1,004	946	1,336	1,180	1,670	1,886	2,672

(1) Option 1: Burglary only; Option 2: Robbery only; Option 3: A combination of Options 1 and 2 in uniform or varying amounts.
(2) See discount page for applicable multipliers and discounts.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, ANNUAL PREMIUMS—CLASS 2

GROSS RECEIPTS

Amount of insurance	Less than $100,000		$100,000, $199,999		$200,000, $299,999		$300,000, $499,999		$500,000, $999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	98	140	150	210	150	210	198	280	246	346	392	554
2,000	186	252	280	376	280	376	372	500	464	624	742	998
3,000	274	362	410	542	410	542	546	722	680	900	1,090	1,440
4,000	354	460	532	690	532	690	708	920	884	1,146	1,416	1,836
5,000	418	520	628	784	628	784	836	1,042	1,044	1,300	1,670	2,082
6,000	442	572	664	856	664	856	882	1,140	1,102	1,424	1,764	2,278
7,000	460	606	688	912	688	912	918	1,214	1,146	1,516	1,834	2,426
8,000	476	644	716	968	716	968	954	1,288	1,190	1,606	1,904	2,572
9,000	484	658	724	984	724	984	966	1,312	1,206	1,638	1,928	2,622
10,000	496	682	744	1,022	744	1,022	990	1,362	1,234	1,702	1,976	2,722
11,000	526	744	788	1,116	788	1,116	1,048	1,484	1,308	1,854	2,094	2,963
12,000	548	792	822	1,188	822	1,188	1,096	1,584	1,368	1,978	2,188	3,164
13,000	560	816	840	1,226	840	1,226	1,120	1,634	1,396	2,040	2,234	3,262
14,000	564	830	848	1,244	848	1,244	1,130	1,656	1,412	2,070	2,258	3,312
15,000	572	842	856	1,262	856	1,262	1,142	1,682	1,426	2,100	2,282	3,360

(1) Option 1: Burglary Only; Option 2: Robbery Only; Option 3: A combination of Options 1 and 2 in Uniform or Varying Amounts.
(2) See Discount Page for Applicable Multipliers and Discounts.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, ANNUAL PREMIUMS—CLASS 3

GROSS RECEIPTS

Amount of insurance	Less than $100,000		$100,000, $199,999		$200,000, $299,999		$300,000, $499,999		$500,000, $999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	112	148	168	218	168	218	222	290	276	362	442	578
2,000	208	260	312	392	312	392	416	520	518	643	830	1,040
3,000	306	376	460	564	460	564	612	752	762	938	1,220	1,500
4,000	396	478	596	718	596	718	794	958	930	1,194	1,584	1,912
5,000	468	544	702	814	702	814	934	1,086	1,166	1,354	1,864	2,168
6,000	494	594	742	892	742	892	988	1,186	1,232	1,482	1,972	2,370
7,000	514	632	772	950	772	950	1,030	1,264	1,284	1,580	2,054	2,524
8,000	536	672	802	1,006	802	1,006	1,068	1,342	1,334	1,674	2,134	2,680
9,000	542	684	812	1,026	812	1,026	1,082	1,368	1,350	1,708	2,160	2,730
10,000	554	710	832	1,064	832	1,064	1,108	1,418	1,384	1,770	2,216	2,832
11,000	588	772	882	1,162	882	1,162	1,176	1,546	1,468	1,930	2,350	3,090
12,000	616	826	924	1,236	924	1,236	1,230	1,648	1,536	2,058	2,458	3,282
13,000	628	850	942	1,276	942	1,276	1,256	1,698	1,568	2,124	2,512	3,398
14,000	636	864	954	1,296	954	1,296	1,270	1,726	1,586	2,154	2,536	3,448
15,000	642	876	964	1,314	964	1,314	1,284	1,752	1,602	2,186	2,564	3,498

(1) Option 1: Burglary Only; Option 2: Robbery Only; Option 3: A combination of Options 1 and 2 in Uniform or Varying Amounts.
(2) See Discount Page for Applicable Multipliers and Discounts.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, ANNUAL PREMIUMS—CLASS 4

GROSS RECEIPTS

Amount of insurance	Less than $100,000		$100,000, $199,999		$200,000, $299,999		$300,000, $499,999		$500,000, $999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	124	152	186	226	186	226	248	302	308	376	494	600
2,000	234	270	350	408	350	408	466	542	582	674	930	1,080
3,000	342	390	514	588	514	588	684	782	852	974	1,366	1,560
4,000	446	498	666	748	666	748	888	996	1,106	1,242	1,772	1,986
5,000	522	564	786	846	786	846	1,046	1,128	1,304	1,408	2,088	2,252
6,000	554	618	830	926	830	926	1,106	1,234	1,380	1,542	2,208	2,466
7,000	576	658	864	988	864	988	1,150	1,314	1,436	1,640	2,300	2,626
8,000	598	698	898	1,046	898	1,046	1,198	1,394	1,494	1,740	2,390	2,784
9,000	606	712	910	1,066	910	1,066	1,212	1,422	1,512	1,774	2,420	2,838
10,000	622	738	932	1,106	932	1,106	1,242	1,474	1,550	1,840	2,480	2,944
11,000	660	804	990	1,206	990	1,206	1,316	1,606	1,644	2,008	2,632	3,210
12,000	688	856	1,034	1,288	1,034	1,288	1,378	1,714	1,720	2,140	2,752	3,424
13,000	704	884	1,056	1,328	1,056	1,328	1,408	1,766	1,758	2,208	2,812	3,530
14,000	712	896	1,068	1,346	1,068	1,346	1,424	1,794	1,776	2,240	2,844	3,582
15,000	720	912	1,080	1,368	1,080	1,368	1,438	1,820	1,796	2,272	2,872	3,638

(1) Option 1: Burglary Only; Option 2: Robbery Only; Option 3: A Combination of Options 1 and 2 in Uniform or Varying Amounts.
(2) See Discount Page for Applicable Multipliers and Discounts.

FEDERAL CRIME INSURANCE PROGRAM, COMMERCIAL CRIME INSURANCE RATES, ANNUAL PREMIUMS—CLASS 5

GROSS RECEIPTS

Amount of insurance	Less than $100,000		$100,000, $199,999		$200,000, $299,999		$300,000, $499,999		$500,000, $999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	118	134	178	202	178	202	236	268	294	332	468	534
2,000	218	242	330	362	330	362	436	480	544	596	872	958
3,000	320	346	478	520	478	520	638	694	796	884	1,274	1,382
4,000	412	442	620	662	620	662	824	882	1,026	1,100	1,644	1,760
5,000	480	500	720	750	720	750	960	1,000	1,198	1,248	1,918	1,996
6,000	512	548	768	822	768	822	1,024	1,094	1,278	1,366	2,048	2,184
7,000	538	584	806	874	806	874	1,074	1,166	1,340	1,454	2,144	2,326
8,000	560	618	842	928	842	928	1,122	1,234	1,400	1,542	2,240	2,468
9,000	570	630	854	946	854	946	1,136	1,260	1,422	1,570	2,274	2,514
10,000	586	654	880	980	880	980	1,172	1,306	1,462	1,632	2,340	2,608
11,000	626	712	940	1,068	940	1,068	1,252	1,424	1,562	1,778	2,502	2,846
12,000	660	760	990	1,140	990	1,140	1,316	1,518	1,644	1,896	2,632	3,034
13,000	676	784	1,012	1,176	1,012	1,176	1,350	1,566	1,684	1,956	2,696	3,130
14,000	682	796	1,024	1,192	1,024	1,192	1,366	1,590	1,706	1,984	2,728	3,176
15,000	690	806	1,038	1,210	1,038	1,210	1,382	1,612	1,728	2,014	2,762	3,224

(1) Option 1: Burglary Only; Option 2: Robbery Only; Option 3: A combination of Options 1 and 2 in Uniform or Varying Amounts.
(2) See Discount Page for Applicable Multipliers and Discounts.

Federal Crime Insurance Program, Commercial Crime Insurance Rates, Annual Premiums—Class 6

GROSS RECEIPTS

Amount of insurance	Less than $100,000		$100,000, $199,999		$200,000, $299,999		$300,000, $499,999		$500,000, $999,999		$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
1,000	120	120	178	180	178	180	238	240	294	298	472	476
2,000	220	216	330	324	330	324	438	430	546	538	874	858
3,000	320	310	478	466	478	466	638	622	796	774	1,274	1,240
4,000	412	396	618	594	618	594	822	792	1,024	988	1,640	1,580
5,000	476	450	716	674	716	674	954	896	1,190	1,120	1,904	1,792
6,000	512	492	766	738	766	738	1,022	980	1,276	1,224	2,042	1,960
7,000	538	522	806	786	806	786	1,074	1,046	1,340	1,304	2,144	2,088
8,000	562	554	844	832	844	832	1,126	1,108	1,402	1,384	2,248	2,214
9,000	572	564	856	848	856	848	1,142	1,130	1,426	1,410	2,280	2,256
10,000	588	586	882	880	882	880	1,176	1,172	1,468	1,464	2,348	2,342
11,000	632	638	948	960	948	960	1,262	1,276	1,576	1,596	2,520	2,552
12,000	666	682	998	1,022	998	1,022	1,330	1,362	1,660	1,702	2,656	2,722
13,000	682	704	1,022	1,054	1,022	1,054	1,362	1,404	1,704	1,754	2,724	2,806
14,000	690	714	1,036	1,072	1,036	1,072	1,380	1,426	1,724	1,780	2,758	2,850
15,000	700	724	1,050	1,086	1,050	1,086	1,398	1,446	1,746	1,806	2,794	2,892

(1) Option 1: Burglary Only; Option 2: Robbery Only; Option 3: A combination of Options 1 and 2 in Uniform or Varying Amounts.
(2) See Discount Page for Applicable Multipliers and Discounts.

(f) If the premises are protected by an acceptable burglar alarm system, class E safe, supervised safe alarm system, holdup alarm or armored car service, premium discounts shall be permitted as follows:

I. BURGLARY CREDITS

Premises alarm system	Safe alarmed		Safe not alarmed	
	Class E or better	Other safe	Class E or better	Other/None
None	.80	.95	.85	1.00
Local	.70	.75	.75	.90
Silent	.65	.75	.70	.80
Central:				
—Without Guard	.60	.70	.65	.75
—With Guard	.55	.65	.60	.70

II. ROBBERY CREDITS

PROTECTION SERVICE

Holdup buttons	Armored car	None
Yes	.85	.90
No	.95	1.00

NOTE: Multiply the burglary or robbery premium by the appropriate factor.

Package Discount

Apply a factor of .90 to the total premium if both burglary and robbery are purchased.

[50 FR 16497, Apr. 26, 1985, as amended at 53 FR 11276, Apr. 6, 1988]

§ 83.25a Application and date of commencement of coverage.

(a) Application for commercial Federal crime insurance shall be made only on forms approved by the Administrator. When a property is found by preinspection to comply with the applicable protective device requirements, coverage on property under a policy covering burglary losses will commence at 12:00 noon following the date of a U.S. Post Office affixed postmark, or proof of Certified or Registered mailing. In the absence of such postmark or other proof sufficient to substantiate the date of mailing, coverage will be effective at 12:00 noon following receipt by the servicing company, unless a later date is specified in the application.

(b) Coverage under a policy covering robbery only will commence as described in paragraph (a) of this section, except that protective device preinspection is not applicable. When both robbery and burglary coverages are applied for on an application, an advance request may be submitted with the application to issue a policy for Option 2 Robbery Only insurance coverage if the premises fails to meet the protective device requirements which must be complied with as a prerequisite to obtaining burglary coverage. In such an event the Option 2 policy covering only robbery losses will commence as described above.

[45 FR 41956, June 23, 1980]

§ 83.26 Required commercial policy form.

The following shall constitute the policy form for the commercial crime insurance policy, and no other policy form shall be used unless otherwise provided by this § 83.26.

(a) [Reserved]

(b) Commercial Crime Insurance Policy form:

FEDERAL INSURANCE ADMINISTRATION

COMMERCIAL CRIME INSURANCE POLICY

The Federal Insurance Administrator, herein called the Insurer, agrees with the insured, named in the Application made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the Application, and subject to (1) the provisions of title VI of Pub. L. 91-609 and Subchapter B, Parts 80 et seq., Chapter I, Title 44 of the Code of Federal Regulations, and (2) the limits of insurance, exclusions, conditions, deductibles, and other terms of this Policy with respect to the following criminal acts:

Insuring Agreements

OPTION 1 (BURGLARY ONLY INCLUDING SAFE BURGLARY)

Option 1 includes insurance coverage only under the individually numbered Insuring Agreements I, II, III, and IV listed below.

I. Burglary: Robbery of a Watchman

To pay for loss by burglary or by robbery of a watchman, while the named premises are not open for business, of merchandise, furniture, fixtures and equipment within the named premises provided that this Insuring Agreement does not extend to the loss of money or securities or to cash value in excess of $50 for any item of jewelry unless such property is forcibly extracted from a locked safe as provided under Insuring Agreement II entitled "Safe Burglary" which follows:

II. Safe Burglary

To pay for loss by safe burglary of money, securities and merchandise within the named premises while the premises are not open for business, but no payment shall be made for loss not forcibly extracted from a locked safe, nor by a loss in excess of $5,000 except with respect to loss by safe burglary of a safe rated for burglary resistance as Class E or better weighing at least seven hundred and fifty pounds or securely anchored to the floor.

III. Damage

To pay for damage to the named premises and to money, securities, merchandise, furniture, fixtures and equipment within the named premises by burglary, robbery of a watchman, safe burglary or attempt thereat provided the insured is the owner thereof or is liable for such damage.

IV. Policy Period, Territory

To pay for losses under Insuring Agreements I, II, and III only when occurring during the policy period within a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and such other territories or possessions of the United States, including the Trust Territory of the Pacific Islands, as defined in 12 U.S.C. 1749bbb-10a et seq. and set forth in 44 CFR Part 80 et seq.

OPTION 2 (ROBBERY ONLY)

Option 2 includes insurance coverage only under the individually numbered insuring Agreement V, VI, VII and VIII listed below.

V. Robbery, Including Observed Theft Inside the Premises

To pay for loss by robbery or observed theft of money, securities, merchandise, furniture, fixtures, and equipment within the named premises.

VI. Robbery, Including Observed Theft, Outside of the Premises

To pay for loss by robbery or observed theft of money, securities and merchandise, including the wallet or bag containing such property while such property is in conveyance by the insured or his messenger outside the named premises, but no payment shall be made for any loss in excess of $5,000 except when the insured or his messenger is accompanied by a guard armed with a firearm. The person carrying the insured property and the armed guard cannot be the same person.

This Insuring Agreement includes theft from a night desository but only if a deposit of money has been made at a night depository of a banking institution by a bonded armored car messenger service.

VII. Damage

To pay for damage to the named premises and to money, securities, merchandise, furniture, fixtures and equipment within the named premises, by robbery, or attempt thereat, provided the insured is the owner thereof or is liable for such damage.

VIII. Policy Period, Territory

To pay for losses under Insuring Agreements V, VI, VII only when occurring during the policy period within a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and such other territories or possessions of the United States including the Trust Territory of the Pacific Islands, as defined in 12 U.S.C. 1749bbb-10a et seq. and set forth in 44 CFR Part 80 et seq.

OPTION 3 (ROBBERY AND BURGLARY IN UNIFORM AND VARYING AMOUNTS)

Option 3 shall provide for uniform and varying limits of coverage under Option 1 and 2 but only in the same policy. Both Option 1 and 2 must be applied for at the same time.

If one of the options has been selected, the other option may be added upon a renewal or upon an endorsement of the original policy. A discount will be provided for Combined Coverage, Option 3.

Option 1 includes insurance coverage under all of the individually numbered Insuring Agreements listed under the headings Option 2 and Option 3, thus constituting a combination of equal amounts of robbery and burglary insurance coverage.

Option 2 includes insurance coverage only under the individually numbered insuring Agreements I, II, III and IV listed below:

I. Robbery, including observed theft inside the premises

To pay for loss by robbery or observed theft of money, securities, merchandise, furniture, fixtures, and equipment within the named Premises.

II. Robbery, including observed theft outside of the premises

To pay for loss by robbery or observed theft of money, securities and merchandise, including the wallet or bag containing such property while such property is in conveyance by the insured or his messenger outside the named premises, but no payment shall be made for any loss in excess of $5,000 except when the insured or his messenger is accompanied by a guard armed with a firearm. The person carrying the insured property and the armed guard cannot be the same person.

This Insuring Agreement includes theft from a night depository but only if a deposit of money has been made at a night depository of a banking institution by a bonded armored car messenger service.

III. Damage

To pay for damage to the named premises and to money, securities, merchandise, furniture, fixtures and equipment within the named premises, by robbery or attempt thereat, provided the insured is the owner thereof or is liable for such damage.

IV. Policy period, territory

To pay for losses under Insuring Agreements I, II and III only when occurring during the policy period within a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and such other territories or possessions of the United States including the Trust Territory of the Pacific Islands as defined in 12 U.S.C. 1749bbb-2 and set forth in 44 CFR 55.1.

Option 3 includes insurance coverage only under the individually numbered Insuring Agreements V, VI, VII and VIII listed below.

V. Burglary, robbery of a watchman

To pay for loss by burglary or by robbery of a watchman, while the named premises are not open for business, of merchandise, furniture, fixtures and equipment within the named premises provided that this Insuring Agreement does not extend to the loss of money or securities or to cash value in excess of $50 for any item of jewelry unless such property is forcibly extracted from a locked safe as provided under Insuring Agreement VI entitled "Safe Burglary" which follows.

VI. Safe burglary

To pay for loss by safe burglary of money, securities and merchandise within the named premises while the premises are not open for business, but no payment shall be made for a loss in excess of $5000 except with respect to loss by safe burglary of a safe rated for burglary resistance as Class E or better weighing at least seven hundred and fifty pounds or securely anchored to the floor.

VII. Damage

To pay for damage to the named premises and to money, securities, merchandise, furniture, fixtures and equipment within the named premises by burglary, robbery of a watchman, safe burglary or attempt thereat provided the insured is the owner thereof or is liable for such damage.

VIII. Policy period, territory

To pay for losses under Insuring Agreements V, VI, and VII only when occurring during the policy period within a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and such other territories or possessions of the United States, including the Trust Territory of the Pacific Islands as defined in 12 U.S.C. 1749bbb-2 and set forth in 44 CFR 55.1.

Option 4 shall include insurance coverage under all of the individually numbered Insuring Agreements listed under the headings Option 2 and 3 but constituting a combination of unequal amounts of robbery and burglary insurance coverages.

Exclusions

This Policy does not apply:

(a) To loss due to embezzlement or to any fraudulent, dishonest or criminal act by any insured, a partner therein, or an officer, employee, director, trustee or authorized representative thereof while working or otherwise and whether acting alone or in collusion with others; provided that this exclusion does not apply to robbery or safe burglary by other than an insured, an officer or a partner thereof.

(b) To loss due to war, whether or not declared, civil war, insurrection, rebellion, or revolution, or to any act or condition incident to any of the foregoing;

(c) To loss of manuscripts, records, or accounts;

(d) Under Insuring Agreement I and II to loss occurring during a fire in the premises.

(e) To loss due to nuclear reaction, nuclear radiation, or radioactive contamination, or to any act or condition incident to any of the foregoing;

(f) To any loss if the premises are not equipped with the protective devices required as a condition of eligibility for the purchase of this Policy by the regulations of the Federal Insurance Administration, as published at the time of the inception of the current term of the Policy in Subchapter B, Parts 80 et seq., Chapter I, Title 44, Code of Federal Regulations.

(g) To loss of personal property of: (1) The insured, an officer or partner thereof, (2) a permanent member of the household of an insured, (3) an employee of an insured; provided that this exclusion does not apply if such personal property is used in furtherance of the conduct of the insured's business.

(h) To loss of any vehicle having four or more wheels designed to be operated on any highway and for which a motor vehicle registration is required for such use.

(i) To loss from burglary or safe burglary at any embassy or consulate of any government other than that of the United States.

(j) To loss from burglary or safe burglary at any named premises which is vacant for a period of more than 60 days.

(k) To loss of property of a business (other than the insured's business) that jointly occupies the named premises with the insured but whose business area is not separated from the insured's business area by a physical barrier. In such an instance the insured shall not be deemed liable to any persons for the property of the other business or businesses despite the location of such property in the same premises named by insured in his or its location.

(l) To loss from a night depository.

Conditions

1. *Definitions*—(a) ***Money.*** "Money" means currency, coins, bank notes, and bullion; and travelers checks, register checks, and money orders held for sale to the public.

(b) *Securities.* "Securities" means all negotiable and nonnegotiable instruments or contracts representing either money or other property and includes revenue and other stamps in current use, tokens, and tickets, but does not include money.

(c) *Premises.* "Premises" means the interior of that portion of any building at a location designated in the Application which is occupied by the insured as stated therein, but shall not include (1) showcases or show windows not opening directly into the interior of the premises, or (2) public entrances, halls, or stairways. As respects Insuring Agreements I and II only, the premises shall also include the space immediately surrounding such building, provided such space is occupied by the insured in conducting his business.

(d) *Custodian.* "Custodian" means the insured, a partner therein, an officer thereof, or any employee thereof who is in the regular service of and duly authorized by the insured to have the care and custody of the insured property within the premises, excluding any person while acting as a watchman, porter, or janitor.

(e) *Messenger.* "Messenger" means the insured, a partner therein, an officer thereof, or any employee thereof who is in the regular service of and duly authorized by the insured to have the care and custody of the insured property outside the premises. In addition "messenger" includes a bonded professional guard and an employee of a bonded armored car service.

(f) *In conveyance.* Money, securities or merchandise is in conveyance while being transported by the insured or his messenger. If the transportation is interrupted for any purpose which is not incidental to or in furtherance of the transportation of the money or property to its destination, the conveyance ceases. Any merchandise offered for sale by the insured or messenger at a location other than the premises named in the policy is not in conveyance. However, the sale of an item merchandise or the performance of a service, other than check cashing, related to the insured's business outside the premises which causes the insured or messenger to collect money from a customer is deemed incidental to and in furtherance of the transportation of money to its destination and the money thus collected and any other money is and remains in conveyance.

Conveyance is interrupted and coverge ceases when (1) the money, securities or merchandise is delivered into and possession relinquished at any premises other than the premises named in the policy, or (2) the money is deposited in a bank, or (3) when an insured or a messenger collecting money, securities or merchandise previously accumulated for his pickup, from more than one location remains with such property in any location for any time longer than reasonably necesssary for him to take custody of such property, or (4) when an insured or a messenger transporting money, securities or merchandise willfully and knowingly undertakes any activity that increases the likelihood of his being exposed to robbery or reduces his ability to carry out his responsibility for the custody of the money or property.

(g) *Robbery.* "Robbery" or "robbery, including observed theft," means the taking of insured property (1) by violence inflicted upon a messenger or a custodian; (2) by putting him in fear of violence; (3) by any other overt felonious act committed in his presence and of which he was actually cognizant, provided such other act is not committed by an officer, partner, or employee of the insured; (4) from the person or direct care and custody of a messenger or custodian who has been killed or rendered unconscious; (5) from within the premises by compelling a messenger or custodian by violence or threat of violence while outside the premises to admit a person into the premises or to furnish him with means of ingress into the premises; or (6) from a showcase or show window within the premises while regularly open for business, by a person who has broken the glass thereof from outside the premises.

(h) *Robbery of a watchman.* "Robbery of a watchman" means a felonious taking of insured property by violence or threat of violence inflicted upon a private watchman employed exclusively by the insured and while such watchman is on duty within the premises.

(i) *Burglary.* "Burglary" or "burglary and larcency incident thereto" means the felonious abstraction of insured property from within the premises by a person making felonious entry therein by actual force and violence, evidenced by visible marks upon, or physical damage to, the exterior of the premises at the place of such entry.

(j) *Safe burglary.* "Safe burglary" or "safe burglary and larcency incident thereto" means (1) the felonious abstraction of insured property from within a vault or safe, the door of which is equipped with a combination lock, located within the premises, by a person making felonious entry into such vault or such safe and any vault containing the safe, when all doors thereof are duly closed and locked by all combination locks thereon, provided such entry shall be made by actual force and violence, evidenced by visible marks upon the exterior of (a) all of said doors of such vault or such safe and any vault containing the safe, if entry is made through such doors, or (b) the top, bottom, or walls of such vault or such safe and any vault containing the safe through which entry is made, if not made through such doors, or (2) the felonious abstraction of such safe from within the premises.

(k) *Jewelry.* "Jewelry" means jewelry, watches, gems, precious or semiprecious stones, and articles containing one or more gems.

(l) *Loss.* "Loss," except as used in Insuring Agreements I through V, includes damage.

(m) *Safe.* A safe is a non-portable money storage compartment not on wheels, which is reinforced with a minimum of ¼ inch solid steel plate throughout, with the exception of the door which must be at least one inch thick, solid steel plate and equipped with a combination lock which is an integral part of the door.

A Class E Safe means a steel safe having walls at least 1 inch thick and doors at least 1 and ½ inches thick, or a vault of steel at least ½ inch thick or of reinforced concrete or stone at least 9 inches thick or of non-reinforced concrete or stone at least 9 inches thick or of non-reinforced concrete or stone at least 12 inches thick, with steel doors at least 1 and ½ inches thick.

(n) Merchandise includes customer's property held for repair or other such work.

2. *Ownership of property; interests covered.* The insured property may be owned by the insured or held by him in any capacity, whether or not the insured is liable for the loss thereof: *Provided,* That the insurance applies only to the interest of the insured in such property, including the insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the insured's proof of loss.

3. *Joint insured.* If more than one insured is named in the Application, the insured first named shall act for every insured for all purposes of this Policy. Knowledge possessed or discovery made by any insured shall, for all purposes, constitute knowledge possessed or discovery made by every insured.

4. *Books and records.* The insured shall keep records of all the insured property in such manner that the Insurer can accurately determine therefrom the amount of loss, and if the insured maintains cash funds for the purpose of check cashing, a complete record of each check negotiated shall be kept by the insured showing the names of the maker, payee and drawee bank, and the date and amount of the check, and such records shall be maintained in a receptacle other than used for money and securities.

5. *Limits of liability; settlement options.* The Insurer shall not be liable on account of any loss unless the amount of such loss shall exceed the amount of the deductible described in the Application which is made a part of this Policy and the Insurer shall then be liable only for such excess over and above the deductible, subject to and within the limit of insurance covered by the Policy.

The limit of the Insurer's liability for loss shall not exceed the applicable limit of insurance stated in the Application, nor what it would cost at the time of loss to repair or replace the property with other of like kind and quality, nor as respects securities the actual cash value thereof at the close of business on the business day next preceding the day on which the loss was discovered, nor as respects other property the actual cash value thereof at the time of loss: *Provided, however,* That the actual cash value of such other property held by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

The applicable limit of insurance stated in the Application is the total limit of the Insurer's liability with respect to all loss of property of one or more persons or organizations arising out of any one occurrence. All loss incidental to an actual or attempted fraudulent, dishonest or criminal act or series of related acts at the premises, whether committed by one or more persons, shall be deemed to arise out of one occurrence.

The Insurer may pay for the loss in money or may repair or replace the property and may settle any claim for loss of property either with the insured or the owner thereof. Any property so paid for or replaced shall become the property of the Insurer. Any property recovered after settlement of a loss shall be applied first to the expense of the parties in making such recovery, with any balance applied as if the recovery had been made prior to said settlement, and loss readjusted accordingly. The insured or the Insurer, upon recovery of any such property, shall give notice thereof as soon as practicable to the other.

(6) Upon knowledge of loss or of an occurrence which may give rise to a claim for loss, the insured shall (a) give notice thereof as soon as practicable to law enforcement authorities and to the Insurer through its authorized agent and (b) file detailed proof of loss duly sworn to, with the insurer through its authorized agent within sixty (60) days after the discovery of loss unless such time is extended by the Federal Insurance Administrator in writing. The Administrator may, in his or her discretion, waive the requirement that the proof of loss be sworn to. Upon the insurer's request, the insured and every claimant hereunder shall submit to examination by the insurer, subscribe the same under penalty of 18 U.S.C. 1001 pertaining to fraud and false representation, and produce all pertinent records, all at such reasonable times and places as shall be designated, and shall cooperate with the insurer in all matters pertaining to loss or claims with respect thereto. The insured shall as a condition of continued coverage take reasonable action immediately following the discovery of a loss to protect the premises from further loss."

7. *Other insurance.* If there is any other valid and collectible insurance which would apply in the absence of this Policy, the insurance under this Policy shall apply only as excess insurance over such other insurance; *Provided*, that the insurance shall not apply (a) to property which is separately described and enumerated and specifically insured in whole or in part by any other insurance; or (b) to property otherwise insured unless such property is owned by the insured.

8. *Appraisal.* If the Insured and the Insurer fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty (60) days after receipt of proof of loss by the Insurer, appoint a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place within thirty (30) days after the two appraisers are appointed. If the appraisers fail to agree, they shall jointly select a competent and disinterested third appraiser and submit the question to him within fifteen (15) days thereafter. The first two appraisers shall state separately the actual cash value at time of loss and the amount of the loss. Subsequent agreement in writing by any two of the three appraisers within thirty (30) days after the third appraiser was selected shall be considered by the Insurer in determining the amount of the loss but shall not be considered binding upon him and shall not be admissible as such in court. The insured and the Insurer shall each pay its chosen appraiser and shall bear equally the expenses of the third appraiser and the other expenses of appraisal. The Insurer shall not be held to have waived any of its rights by any act relating to appraisal.

9. *Action against insurer.* No action shall lie against the Insurer unless, as a condition precedent thereto, there shall have been compliance with all the terms of this Policy and the applicable regulations of the Federal Insurance Administration, nor until ninety (90) days after the required proofs of loss have been filed with the Insurer, nor at all unless commenced within 2 years from the date when the insured discovers the loss and within 1 year after the date upon which the claimant received written notice of disallowance or partial disallowance of the claim. Any such action shall be brought in a U.S. district court, as required by 12 U.S.C. 1749bbb–11.

10. *Subrogation.* In the event of any payment under this Policy, the Insurer shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

11. *Changes.* Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this Policy or estop the Insurer from the asserting any right under the terms of this Policy; nor shall the terms of this Policy be waived or challenged, except by endorsement issued to form a part of this Policy, as approved by the Federal Insurance Administrator.

12. *Cancellation.* This Policy may be cancelled by the insured by surrender thereof to the Insurer or any of its authorized agents or by mailing to the Insurer written notice stating when thereafter the cancellation shall be effective. The grounds for cancellation of coverage by the Insurer shall be limited to those set forth in Subchapter B, Parts 80 et seq., Chapter I, Title 44 of the Code of Federal Regulations. Except as otherwise provided by such regulations, notice of cancellation by the Insurer shall be mailed to the named insured at the address shown in this Policy, stating when not less than thirty (30) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date of cancellation stated in the notice shall become the end of the Policy period. Delivery of such written notice either by the named insured or by the Insurer shall be equivalent to mailing. In the event of cancellation, earned premium shall

be computed in accordance with the customary short rate table and procedure, unless otherwise specifically provided in said Regulations issued by the Insurer. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

13. *Assignment.* Assignment of interest under this Policy shall not bind the Insurer until its consent is endorsed hereon; if, however, the insured shall die, this Policy shall cover the insured's legal representative as insured; provided that notice of cancellation addressed to the insured named in the Application and mailed to the address shown in this Policy shall be sufficient notice to effect cancellation of this Policy.

14. *Declarations.* By signing the Application or by acceptance of this Policy the insured certifies and agrees, under penalty of Federal law dealing with fraud and false representation (18 U.S.C. 1001), that the statements in the Application are his agreements and representations, that this Policy is issued in reliance upon the truth of such representations, that he is aware of the applicability of the regulations issued by the Insurer, and that this Policy and said regulations embody all agreements existing between himself and the Insurer or any of its agents relating to this insurance.

In witness whereof, the Federal Insurance Administrator has accepted the declarations of the insured set forth in the Application and has caused this Policy to be issued.

______________________________,
Federal Insurance Administrator.

(c) Such endorsements to the Commercial Crime Insurance Policy forms as the insurer may approve.

[36 FR 24774, Dec. 22, 1971, as amended at 38 FR 19687, July 23, 1973. Redesignated at 44 FR 31177, May 31, 1979, and amended at 48 FR 19372, Apr. 29, 1983; 49 FR 43472, Oct. 29, 1984; 50 FR 16499, Apr. 26, 1985; 52 FR 30687, Aug. 17, 1987]

PARTS 84–149 [RESERVED]

SUBCHAPTER C—FIRE PREVENTION AND CONTROL

EDITORIAL NOTE: Nomenclature changes for Subchapter C appear at 44 FR 56172, Sept. 28, 1979.

PART 150—PUBLIC SAFETY AWARDS TO PUBLIC SAFETY OFFICERS

Sec.
150.1 Background and purpose.
150.2 Definitions.
150.3 Nomination process.
150.4 Nomination and selection criteria.
150.5 Joint Public Safety Awards Board.
150.6 Design and procurement of awards.
150.7 Selection process.
150.8 Presentation of awards.
150.9 Funding.
150.10 Date of submission of nominations.

AUTHORITY: Federal Fire Prevention and Control Act of 1974, sec. 15, 15 U.S.C. 2214; Reorg. Plan No. 3 of 1978, 3 CFR 1978 Compilation p. 329 and Executive Order 12127, dated March 31, 1979 3 CFR 1979 Compilation p. 376.

SOURCE: 49 FR 39845, Oct. 11, 1984, unless otherwise noted.

§ 150.1 Background and purpose.

The regulations in this part are issued under the authority of the Federal Fire Prevention and Control Act of 1974 (the Act), 15 U.S.C. 2201 *et seq.* The Act establishes two classes of honorary awards for public safety officers and directs the issuance of the necessary joint regulations by the Director of the Federal Emergency Management Agency (FEMA) and the Attorney General. The functions of the Secretary of Commerce were transferred by Reorganization Plan No. 3 of 1978 to the Director, FEMA. Since initial passage of the Act, civil defense functions which then were delegated to the Secretary of Defense have been delegated to the Director, FEMA. Section 15 of the Act has been amended to delete the Secretary of Defense from participating in the granting of awards. *See* Pub. L. 98-241, 98 Stat. 95, 96 (1984). The Director, FEMA, and the Attorney General are issuing this regulation to implement the statutory provisions for FEMA and the Department of Justice.

§ 150.2 Definitions.

"Civil defense officer" (or member of a recognized civil defense or emergency preparedness organization) means any individual who is assigned to and is performing the assigned tasks of the unit or organization which has been given a mission under the direction or operational control of a Civil Defense or Emergency Preparedness Director/Coordinator in accordance with a Federal, State or local emergency plan and sanctioned by the government concerned. This also includes emergency management officers. This includes volunteers and paid employees for any governmental entity.

"Distinguished Public Safety Service Award" means the "Secretary's Award for Distinguished Public Safety Service," presented by either the Attorney General or the Director of FEMA to public safety officers for distinguished service in the field of public safety.

"FEMA" means the Federal Emergency Management Agency.

"Firefighter" means a member, regardless of rank or duties, of any organization (including such Federal organizations) in any State consisting of personnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire. This term includes volunteer or paid employees. The location of any such organization may include, but is not limited to, a Federal installation, a State, city, town, borough, parish, county, fire district, rural fire district or other special district.

"Joint Board" means the Joint Public Safety Awards Board established by the Director of the Federal Emergency Management Agency and the Attorney General to carry out the purposes of the Federal Fire Prevention and Control Act of 1974.

"Law enforcement officer" means a person involved in the control or reduction of crime and juvenile delinquency or enforcement of the criminal laws. This includes, but is not limited to, police, corrections, probation, parole, and court officers, and Federal civilian officers in such capacities.

"Nominating official" means the head of a Federal government department or agency, or his delegatee(s), the governor or other head of a State, or the chief executive or executives of any general governmental unit within any State.

"President's Award" means the President's Award for Outstanding Public Safety Service, presented by the President of the United States to public safety officers for extraordinary valor in the line of duty or for outstanding contributions to public safety.

"Public safety officer" means a person serving a public agency, with or without compensation, as a firefighter, a civil defense officer (or member of a recognized civil defense or emergency preparedness organization), or a law enforcement officer, including a corrections or court officer.

"State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands and any other territory or possession of the United States.

§ 150.3 Nomination process.

(a) The Nominating Officials nominating Firefighters and Civil Defense Officers shall submit their nominations for the President's Award or Distinguished Public Safety Service Award to the Executive Secretary, Joint Public Safety Awards Board, National Emergency Training Center, Emmitsburg, MD 21727. Copies of all nominations shall also be forwarded, depending on the category of the nominee, as follows:

(1) Firefighter: FEMA, Attention: Superintendent, National Fire Academy, Emmitsburg, MD 21727.

(2) Civil defense officer (or member of a recognized civil defense or emergency preparedness organization): FEMA, Attention: Superintendent, Emergency Management Institute, Emmitsburg, MD 21727.

(b) The Nominating Officials nominating law enforcement, corrections or court officers shall submit their nominations for the President's Award or Distinguished Public Safety Service Awards to: Assistant Attorney General for Administration, U.S. Department of Justice, Washington, DC 20530.

(c) All nominations shall be submitted in writing in accordance with the requirements prescribed in this section and § 150.4 at the earliest practicable date after the performance of the act or acts for which the nomination is made. Nominations for each year shall be made before November 15; any received thereafter will be considered as having been made for the following year. However, for the year 1983, nominations may be made by February 28, 1985.

(d) Nominations for the President's Award or the Distinguished Public Safety Service Award should include the name of the candidate, his/her position, title and address, and public agency served, the locale where the candidate performs his/her duties, the name, address and telephone number of the nominating official, a summary describing the outstanding contribution, distinguished service or extraordinary valor, and the dates relating thereto. The description should be sufficiently concise and specific to justify the request for recognition of the public safety officer through the presentation of either of the awards. Copies of any published factual accounts of the nominee's accomplishment should also be attached when available.

(e) An annual invitation shall be issued by the Joint Board for nominations for the President's Award and, on behalf of the Attorney General and the Director of FEMA, for the Distinguished Public Safety Service Award. The invitation shall be issued by letter or by notice in apporpriate publications of interest to the public safety community. However, nominating officials need not wait for such invitation but may nominate at the most appropriate time in accordance with the other provisions of this part. Approved by the Office of Management and Budget under Control No. 3067-0150.

[49 FR 39845, Oct. 11, 1984, as amended at 50 FR 3350, Jan. 24, 1985]

§ 150.4 Nomination and selection criteria.

(a) Nominations for the President's Award of the Distinguished Public Safety Service Award shall be made on the basis of, and in conformity with, the following uniform criteria.

(1) *President's Award.* Documentation accompanying the nomination for this Award must indicate not only that the nominee unquestionably meets the standards established for the Distinguished Public Safety Service Award (see paragraph (a)(2) of this section), but also deserves greater public recognition because he/she has demonstrated unique qualities of courage, imagination or ability, which have resulted in outstanding contributions to the public safety.

(2) *Distinguished Public Safety Service Award.* Nomination for this award shall clearly show that the public safety officer's qualifying service or act is marked by courage, imagination or ability or has resulted in a significant contribution to the public safety accomplished through an originality of effort which far exceeds the expected quality of performance of the normal duties assigned to the nominee.

(b) A nomination shall specify whether it is being submitted for the President's Award or the Distinguished Public Safety Award.

§ 150.5 Joint Public Safety Awards Board.

(a) A Joint Public Safety Awards Board (Joint Board) is hereby established to fulfill the responsibilities of the Director of FEMA and the Attorney General by administering the process of nomination for the President's Award and by participating in the selection process with the Executive Office of the President. The Joint Board shall consist of ten representatives who are Federal employees and are of appropriate rank (at or equivalent to grades GM-14 or above). Five persons shall be named by and represent the Director of FEMA, and five persons shall be named by and represent the Attorney General. The representatives serving on the Joint Board shall select one of their number to act as the chairperson.

(b) Representatives on the Joint Board shall serve in addition to their regular duties and without additional compensation. Consistent with the requirements of this part, the members of the Joint Board shall establish the procedures by which the selections for the President's Award shall be made to assure the timely presentation of these awards.

(c) A National Emergency Training Center employee shall act as Executive Secretary of the Joint Board. The Executive Secretary shall perform such functions as are appropriate to the Board's responsibilities, including the receipt of all nominations and the communication of nomination information, for the purpose of receiving comments thereon, from members of the public safety community pursuant to § 150.5(e). The Executive Secretary shall be appointed by the Associate Director, Training and Fire Programs of FEMA.

(d) The Joint Board shall review the nomimations for the President's Award and shall recommend to the Director, FEMA, and the Attorney General by February 1 of each year, those nominees determined by it to merit consideration for the President's Award together with reasons therefor. The Director and the Attorney General shall then recommend to the President those nominees determined by them to merit the President's Award, together with the reasons therefor. Recommendations for 1983 shall be submitted on or before March 29, 1985.

(e) The Joint Board may request that persons representing a cross-section of the national public safety community comment upon nominations made to the Board for the President's Award. Both the request for comments and the comments themselves shall be made in writing.

[49 FR 39845, Oct. 11, 1984, as amended at 50 FR 3350, Jan. 24, 1985]

§ 150.6 Design and procurement of awards.

(a) The Joint Board shall consult with the Department of the Treasury and the Executive Office of the President in regard to the design and procurement of the appropriate citations and medal for the President's Award in accordance with applicable laws and regulations.

(b) Insofar as practicable, the designs for Distinguised Public Safety Service Awards of FEMA and the Department of Justice shall be coordinate so as to avoid distinctly different recognition of the various public safety officers.

§ 150.7 Selection process.

(a) *President's Award.* Nominations for the President's Award shall be reviewed, and winners selected by the President (or his designee) in accordance with the reqirements of § 150.3, the criteria in § 150.4(a)(1), and the procedures of § 150.5.

(b) *Distinguished Public Safety Service Award.* Upon receipt of nominations for this Award, the Director of FEMA or the Attorney General shall cause an evaluation and selection of the nominees to be made in accordance with the requirements of § 150.3 and the criteria prescribed in § 150.4(a)(2). In reviewing nominations, the Attorney General or the Director of FEMA may request that persons representing the relevant segment of the national public safety community comment upon the nomination and accompanying documentation. Both the request for comments and the comments themselves shall be made in writing.

(c) Individuals nominated for the President's Award who are considered not to meet the criteria for the Award by the Joint Board or who are not recommended to or selected by the President shall be automatically considered by the appropriate authority for nomination for the Distinguished Public Safety Service Award.

(d) Individuals nominated for the Distinguished Public Safety Service Award may be considered by the Joint Board for the President's Award if the Director of FEMA or the Attorney General determines that consideration for the President's Award is merited.

§ 150.8 Presentation of awards.

(a) Presentation of the President's Award shall be made at such time, place and circumstances as the Executive Office of the President directs. There shall not be more twelve President's Awards given out during any calendar year.

(b) Presentation of the Distinguished Public Safety Service Award shall be made by the Attorney General or the Director of FEMA or a designee at such time, place and circumstances as the Director of FEMA or the Attorney General determines. There is no limit on the number of these awards made during any calendar year.

§ 150.9 Funding.

(a) *President's Award.* The costs involved in designing and striking the medal to be presented in conjunction with the President's Award shall be prorated among the agencies concerned. The cost of producing the medal and printing the certificate shall be borne by FEMA if the recipient is a firefighter or a civil defense officer. If the award recipient is a law enforcement officer, then such cost shall be borne by the Department of Justice.

(b) *Distinguished Public Safety Service Award.* All expenses in connection with this Award shall be borne by the appropriate Agency.

§ 150.10 Date of submission of nominations.

Nominations may only be submitted for acts, services, or contributions occurring within two years preceding the November 15 cut-off date described in § 150.3(c) of this part. However, nominations submitted prior to the February 28, 1985 cut-off date may be made for acts, services or contributions occurring on or after October 29, 1972 (two years before the effective date of the Act).

[50 FR 3350, Jan. 24, 1985]

PART 151—REIMBURSEMENT FOR COSTS OF FIREFIGHTING ON FEDERAL PROPERTY

Subpart A—Purpose, Scope, Definitions

Sec.
151.01 Purpose.
151.02 Scope.
151.03 Definitions.

Subpart B—Submission, Determination, Appeal

151.11 Submission of claims.
151.12 Determination of amount authorized for payment.
151.13 Reconsideration of amount authorized for payment.
151.14 Adjudication.

Subpart C—Administration, Penalties

151.21 [Reserved]
151.22 Audits.
151.23 Penalties.

AUTHORITY: Secs. 11 and 21(b)(5), Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2210 and 2218(b)(5)); Reorganization Plan No. 3 of 1978 (3 CFR, 1978 Comp. p. 329) and E.O. 12127, dated Mar. 31, 1979 (3 CFR, 1979 Comp. p. 376).

SOURCE: 49 FR 5929, Feb. 16, 1984, unless otherwise noted.

Subpart A—Purpose, Scope, Definitions

§ 151.01 Purpose.

Section 11 of the Federal Fire Prevention and Control Act of 1974, provides that "each fire service that engages in the fighting of a fire on property which is under the jurisdiction of the United States may file a claim with the Director of the Federal Emergency Management Agency for the amount of direct expenses and direct losses incurred by such fire service as a result of fighting such fire." This part, implements section 11 of the Act and governs the submission, determination, and appeal of claims under section 11.

§ 151.02 Scope.

Fire services, in any State, may file claims for reimbursement under section 11 and this part for the direct expenses and losses which are additional firefighting costs over and above normal operating costs incurred while fighting a fire on property which is under the jurisdiction of the United States. Section 11 requires that certain payments be deducted from those costs and that the Treasury Department will ordinarily pay the amount resulting from the application of that formula. Where the United States has entered into a contract (which is not a mutual aid agreement, defined in § 151.03) for the provision of fire protection, and it is the intent of the parties that reimbursement under section 11 is unavailable, this intent will normally govern. Where a mutual aid agreement is in effect between the claimant and an agency of the United States for the property upon which the fire occurred, reimbursement will be available in otherwise proper situations. However, any payments (including the value of services) rendered under the agreement during the term of the agreement (or the Federal fiscal year in which the fire occurred, if no term is discernible) shall be deducted from the costs claimed, pursuant to § 151.12.

§ 151.03 Definitions.

(a) "The Act" means the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. 2201 *et seq.*

(b) "Additional firefighting costs over and above normal operating costs" means reasonable and authorized (or ratified by a responsible Federal official) costs ordinarily associated with the function of firefighting as performed by a fire service. Such costs would normally arise out of response of personnel and apparatus to the site of the fire, search and rescue, exposure protection, fire containment, ventilation, salvage, extinguishment, overhaul, and preparation of the equipment for further use. This would also include costs associated with emergency medical services to the extent normally rendered by a fire service in connection with a fire. Not included are administrative expenses, costs of employee benefits, insurance, disability, death, litigation or health care, and the costs associated with processing claims under section 11 of the Act and this part.

(c) "Director" means the Director of the Federal Emergency Management Agency, or his/her designee.

(d) "Claimant" means a fire service as defined in paragraph (g) of this section.

(e) "Direct expenses and losses" means expenses and losses which would not have been incurred had not the fire in question taken place. This includes salaries for specially employed personnel, overtime pay, the cost of supplies expended, and the depreciated value of equipment destroyed or damaged. It does not include such costs as the ordinary wages of firefighters, overhead costs, or depreciation (if based on other than hours of use during fires). Expenses as defined herein would normally be incurred after the first call or alarm and would normally cease upon the first of the following: return to station, report in-service and ready for further operations, or commence response to another incident.

(f) "Fire" means any instance of destructive or uncontrolled burning, including scorch burns and explosions of combustible dusts or solids, flammable liquids, and gases. The definition does not include the following except where they cause fire or occur as a consequence of fire: Lightning or electrical discharge, explosion of steam boilers, hot water tanks, or other pressure vessels, explosions of ammunition or other detonating materials, overheating, mechanical failures, or breakdown of electrical equipment in power transmission facilities, and accidents involving ships, aircraft, or other vehicles. Not included in this definition are any costs associated with false alarms, regardless of cause.

(g) "Fire service" means any organization in any State consisting of personnnel, apparatus, and equipment which has as its purpose protecting property and maintaining the safety and welfare of the public from the dangers of fire, including a private firefighting brigade. The personnel of any such organization may be paid employees or unpaid volunteers or any combination thereof. The location of any such organization and its responsibility for extinguishment and suppression of fires may include, but need not be limited to, a State, city, town, borough, parish, county, fire district, fire protection district, rural fire district, or other special district.

(h) "Mutual aid agreement" means any reciprocal agreement whether written or oral between a Federal agency and the claimant fire service, or its parent jurisdiction, for the purpose of providing fire protection for the property of the United States upon which the fire which gave rise to the claim occurred and for other property for which the claimant normally provides fire protection. Such agreement must be primarily one of service rendered for service, or must be entered into under 42 U.S.C. 1856-1856d. Not included are all other agreements and contracts, particularly those in which the intent of the parties is that the United States pays for fire protection.

(i) "FEMA" means the Federal Emergency Management Agency.

(j) "Over and above normal operating expenses" means costs, losses and expenses which are not ordinarily and necessarily associated with the maintenance, administration, and day-to-day operations of a fire service and which would not have been incurred absent the fire out of which the claim arises.

(k) "Payments to the fire service or its parent jurisdiction, including taxes or payments in lieu of taxes, the United States has made for the support of fire services on the property in question" means any Federal monies, or the value of services, including those made available through categorical or block grants, contracts, mutual aid agreements, taxes, and payments in lieu of taxes which the United States has paid to the fire service or its parent jurisdiction for fire protection and firefighting services. Such payments will be determined on the basis of the term of the arrangement, or if no such term is discernible, on the basis of the Federal fiscal year in which the fire occurred.

(l) "Property which is under the jurisdiction of the United States" means real property and Federal improvements thereon and appurtenances thereto in which the United States holds legal fee simple title. This excludes Federal leasehold interests. This likewise excludes Federal personal property on land in which the United States does not hold fee simple title.

(m) "State" means any State of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, The Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

Subpart B—Submission, Determination, Appeal

§ 151.11 Submission of claims.

Any fire service in any State which believes it has a claim(s) cognizable under section 11 shall submit its claim(s) in writing within 90 days of the occurrence of the fire(s) for which a claim(s) is made. If the fire is of such duration that the claimant desires to submit a claim before its conclusion, it may do so, but only for the eligible costs actually incurred to date. Additional claims may be filed for costs later incurred. Claims shall be submitted to the Director, FEMA, Washington, DC, 20472. Each claim shall include the following information:

(a) Name, address, jurisdiction and nature (volunteer, private, municipal, etc.) of claimant's fire service organization;

(b) Name, title, address and telephone number of individual authorized by the claimant fire service to make this claim in its behalf and his/her certification as to the accuracy of the information provided;

(c) Name and telephone number of Federal employee familiar with the facts of the event and the name and address of the Federal agency having jurisdiction over the property on which the fire occurred;

(d) Proof of authority to fight the fire (source of alarm, whether fire service was requested by responsible Federal official or whether such an official accepted the assistance when offered);

(e) Personnel and equipment committed to fighting of fire (type of equipment and number of items); and an itemized list of direct expenses (e.g., hours of equipment operation, fuel costs, consumables, overtime pay and wages for any specially hired personnel) and direct losses (e.g., damaged or destroyed equipment, to include purchase cost, estimate of the cost of repairs, statement of depreciated value immediately preceding and subsequent to the damage or destruction and the extent of insurance coverage) actually incurred in fighting the fire. A statement should be included explaining why each such expense or loss is considered by the claimant not be a normal operating cost, or to be in excess of normal operating costs;

(f) Copy of fire report which includes the location of the fire, a description of the property burned, the time of alarm, etc.;

(g) Such other information or documentation as the Director considers relevant to those considerations to be made in determining the amount authorized for payment, as set forth in § 151.12 of these regulations;

(h) Source and amount of any payments received or to be received for the fiscal year in which the fire occurred, including taxes or payments in lieu of taxes and including all monies received or receivable from the United States through any program or agreement including categorical or block grants, and contracts, by the claimant fire service or its parent jurisdiction for the support of fire services on the property on which the fire occurred. If this information is available when the claim is submitted, it should accompany the claim. If it is not, the information should be submitted as soon as practicable, but no later than 15 days after the end of the Federal fiscal year in which the fire occurred.

(Approved by Office of Management and Budget under control number 3067-0141)

§ 151.12 Determination of amount authorized for payment.

(a) The Director shall determine the amount to be paid on a claim (subject to payment by the Department of the Treasury). The amount to be paid is the total of eligible expenses, costs and losses under paragraph (a)(1) of this section which exceeds the amount of payments under paragraph (a)(2) of this section. The Director shall establish the reimbursable amount by determining:

(1) The extent to which the fire service incurred additional firefighting costs, over and above its normal operating costs, in connection with the fire which is the subject of the claim, i.e., the "amount of costs"; and

(2) What payments, if any, including taxes or payments in lieu of taxes, the fire service or its parent jurisdiction has received from the United States for the support of fire services on the property on which the fire occurred.

The reimbursable amount is the amount, if any, by which the amount of costs, determined under paragraph (a)(1) of this section exceeds the amount of payments determined under paragraph (a)(2) of this section. Where more than one claim is filed the aggregate reimbursable amount is the amount by which the total amount of costs, determined under paragraph (a)(1) of this section exceed the amount of Federal payments (in the case of a mutual aid agreement—its term or if none is determinable, the Federal fiscal year) determined under paragraph (a)(2) of this section.

(b) The Director will first determine the costs as contemplated in paragraph (a)(1) of this section. The Director will then notify the claimant as to that amount. The claimant must indicate within 30 days its acceptance or rejection of that amount.

(1) If the determination is accepted by the claimant, this will be the final and conclusive determination of the amount of costs by the claimant in conjunction with the fire for which the claims are submitted.

(2) If the claimant rejects this amount, it must notify the Director, within 30 days, of its reasons for its rejection. Upon receipt of notification of rejection, the Director shall reconsider his determination and notify the claimant of the results of the reconsideration. The amont determined on reconsideration will constitute the costs to be used by the Director in determining the reimbursable amount.

(c) Upon receipt of documentation from the claimant on the amount of payments the Federal Government has made for the support of fire services on the property in question, the Director will, following such verification or investigation as the Director may deem appropriate, calculate the full amount to be reimbursed under the section 11 formula as set forth in § 151.12(a). This calculation of the reimbursable amount is based upon the costs determined pursuant to § 151.12(b) and the documentation of Federal payments that the claimant submitted.

(d) The Director's determination of the reimbursable amount will be sent to the Secretary of the Treasury. The Secretary of the Treasury shall, upon receipt of the claim and determination made under § 151.12 (a), (b), and (c), determine the amount authorized for payment, which shall be the amount actually available for payment from any monies in the Treasury not otherwise appropriated but subject to reimbursement (from any appropriations which may be available or which may be made available for the purpose) by the Federal department or agency under whose jurisdiction the fire occurred. This shall be a sum no greater, although it may be less, that the reimbursable amount determined by the Director, FEMA, with respect to the claim under § 151.12 (a), (b) and (c).

(e) Upon receipt of written notification from the claimant of its intention to accept the amount authorized as full settlement of the claim, accompanied by a properly executed document of release, the Director will forward the claim, a copy of the Director's determination and the claimant's document of release to the Secretary of the Treasury for payment of the claim in the amount authorized.

(f) Subject to the discovery of additional material evidence, the Director may reconsider any determination in this section, whether or not made as his final determination.

[49 FR 5929, Feb. 16, 1984, as amended at 49 FR 38119, Sept. 27, 1984]

§ 151.13 Reconsideration of amount authorized for payment.

(a) If the claimant elects to protest the amount authorized for payment, after the applicable procedures of § 151.12 have been followed, it must within 30 days of receipt of notification of the amount authorized notify the Director in writing of its objections and set forth the reasons why the Director should reconsider the determination. The Director will upon notice of protest and receipt of additional evidence reconsider the determination of the amount of Federal payments under § 151.12(a)(2) but not the determination of the amount of costs under § 151.12(a)(1). The Director shall cause a reconsideration by the Secretary of the Treasury of the amount actually available and authorized for payment by the Treasury. The Director, upon receipt of the Secretary of the Treasury's reconsidered determination, will notify the claimant in writing of the amount authorized, upon reconsideration, for payment in full settlement of the claim.

(b) If the claimant elects to accept the amount authorized, upon reconsideration, for payment in full settlement of its claims, it must within 30 days (or a longer period of time acceptable to the Director) of its receipt of that determination notify the Director of its acceptance in writing accompanied by a properly executed document of release. Upon receipt of such notice and document of release, the Director will forward the claim, a copy of the Director's final determination, and the claimant's document of release to the Secretary of the Treasury for payment of the claim in the amount of final authorization.

§ 151.14 Adjudication.

If the claimant, after written notice by the Director of the amount authorized for payment in full settlement of the claim and after all applicable procedures of §§ 151.12 and 151.13 have been followed elects to dispute the amount authorized, it may then initiate action in the United States Claims Court, which shall have jurisdiction to adjudicate the claim and enter judgment in accordance with section 11(d) of the Act.

Subpart C—Administration, Penalties

§ 151.21 [Reserved]

§ 151.22 Audits.

At the discretion of the Director, all claims submitted under section 11 of the Act and all records of the claimant will be subject to audit by the Director or his/her designee. In addition, the Comptroller General of the United States or his/her designee shall have access to all books and records of all claimants making claims under section 11.

§ 151.23 Penalties.

Claimant's officials or others who provide information or documentation under this part are subject to, among other laws, the criminal penalties of Title 18 of the United States Code, sections 287 and 1001, which punish the submission of false, fictitious or fraudulent claims and the making of false, fictitious or fraudulent statements and which provide for a fine of not more than $10,000 or imprisonment for not more than five years, or both. For such a violation, the person is likewise subject to the civil penalties set out in 31 U.S.C. 3729 and 3730.

PARTS 152–199 [RESERVED]

SUBCHAPTER D—DISASTER ASSISTANCE

EDITORIAL NOTE: Nomenclature changes for Subchapter D appear at 44 FR 56172, Sept. 28, 1979, 44 FR 62516, Oct. 31, 1979, and 46 FR 45138, Sept. 10, 1981.

PARTS 200-201 [RESERVED]

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SOURCE: 40 FR 23253, May 28, 1975, unless otherwise noted. Redesignated at 44 FR 56172, Sept. 28, 1979.

Subpart A—General

SOURCE: 45 FR 53335, Aug. 11, 1980, unless otherwise noted

§ 205.1 Purpose.

The purpose of this part is to prescribe the standards and procedures to be followed in implementing those sections of Pub. L. 93-288 assigned to the Director, Federal Emergency Management Agency (FEMA) by Executive Order 12148 and delegated to the Associate Director, FEMA.

§ 205.2 Definitions.

(a) *General.* The following definitions have general applicability throughout this part:

(1) "The Act" means the Disaster Relief Act of 1974 Pub. L. 93-288, as amended: 42 U.S.C. 5121 *et seq.*

(2) "Applicant" (i) for public assistance (Subpart E) means the State, local government, or eligible private nonprofit facility submitting a project application or request for direct Federal assistance under the Act or on whose behalf the Governor's Authorized Representative takes such action, and (ii) for individual assistance (Subpart D) means an individual or family who submits an application or request for assistance under the Act.

(3) "Associate Director" means the Associate Director for State and Local Programs and Support, FEMA, or his/her designated representative.

(4) "Contractor" means any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the Federal Government or a State or local agency.

(5) "Designated area" means any emergency or disaster-affected portion of a State which the Associate Director has determined is eligible for Federal assistance.

(6) "Director" means the Director, FEMA.

(7) "Disaster Recovery Manager" means the person appointed to exercise the authority of a Regional Director for a particular emergency or major disaster.

(8) "Emergency" means any hurricane, tornado, storm, flood, high water, winddrive water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a major disaster. For the purpose of these regulations, an emergency exists when the President so determines.

(9) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(10) "Federal Coordinating Officer (FCO)" means the person appointed by the Director, or in his absence, the Deputy Director, or alternatively the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(11) "Governor" means the chief executive of any State or the Acting Governor.

(12) "Governor's Authorized Representative" means the person named by the Governor in the Federal-State Agreement to execute on behalf of the State all necessary documents for disaster assistance and evaluate and to transmit local government, eligible private non-private facility, and State agency requests for assistance to the Regional Director following a major disaster or emergency declaration.

(13) "Local government" means (i) any county, city, village, town, district, or other political subdivision of any State; any Indian tribe or authorized tribal organization; or Alaska Native village or organization, and (ii) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by State or political subdivision thereof.

(14) "Major disaster" means any hurricane, tornado, storm, flood, highwater, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(15) "Private nonprofit organization" means any nongovernmental agency or entity that currently has (i) an effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under section 501 (c), (d), or (e) of the Internal Revenue Code of 1954 or (ii) satisfactory evidence from the State that the organization or entity is a nonprofit one organized or doing business under State law.

(16) "Public facility" means any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational or recreational purposes, or any park.

(17) "Regional Director" means a director of a regional office of the Federal Emergency Management Agency (FEMA), of his/her designated representative. As used in these regulations Regional Director also means the Disaster Recovery Manager who has been appointed to exercise the authority of Regional Director for a particular emergency or major disaster.

(18) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.

(19) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the Federal Coordinating Officer.

(20) "State emergency plan" as used in section 301(b) of the Act means that State plan which is designated specifically for State-level response to emergencies or major disasters and which sets forth actions to be taken by the State and local governments, including those for implementing Federal disaster assistance.

(21) "Temporary housing" means emergency or temporary accommodations provided by the Federal Government to individuals or families made homeless by an emergency or a major disaster (see § 205.52).

(22) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(23) "Voluntary organization" means any chartered or otherwise duly recognized tax-exempt local, State, or national organization or group which has provided or may provide needed services to the States, local governments, or individuals in coping with a disaster.

(b) Definitions which apply to individual subparts are found in those subparts.

[45 FR 53335, Aug. 11, 1980, as amended at 46 FR 45138, Sept. 10, 1981; 50 FR 40007, Oct. 1, 1985]

§ 205.3 Policy.

(a) It is the policy of the Federal Emergency Management Agency (FEMA) to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from major disasters and emergencies by:

(1) Providing Federal assistance for public and private losses and needs sustained from disasters;

(2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and local governments;

(3) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) Encouraging individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance;

(5) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

(b) It is also the policy of FEMA to foster the development of State and local government organizations and plans for coping with disasters, and to provide advice and guidance to Federal agencies and States and local governments on organization and preparedness to meet the effects of disasters.

(c) It is further a policy of FEMA to ensure that the individual disaster victims are informed of available Federal assistance and to assist individual victims in obtaining the Federal assistance to which they are entitled. Through coordination of all Federal programs and procedures, FEMA shall facilitate, wherever possible, the victims' understanding of these programs and simplify any actions required on the part of those victims who apply for assistance.

§ 205.4 State emergency plans.

The State shall set forth in the State's emergency plan all responsibilities and actions specified in the Act and these regulations that are required of the State and its political subdivisions to prepare for and respond to disasters and to facilitate the delivery of Federal disaster assistance.

§ 205.5 Assistance by Federal agencies.

(a) Upon the declaration of a major disaster or an emergency by the President, the Associate Director or the Regional Director may direct any Federal agency to provide assistance to State and local governments by:

(1) Utilizing or lending their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any act;

(2) Distributing medicine, food, and other consumable supplies; and

(3) Rendering assistance under the authority of the Act. Such assistance is provided with or without compensation as considered appropriate by the Associate Director or Regional Director under the provisions of "Subpart I—Reimbursement of Other Federal Agencies" of these regulations.

(b) Federal agencies shall provide any reports or information about disaster assistance rendered under provisions of these regulations, that the FCO or Regional Director considers necessary and requests from the agencies.

(c) Assistance furnished by any Federal agency under paragraph (a) of this section is subject to the eligibility criteria provided by the Associate Director under these regulations and other instructions as the Associate Director or Regional Director may issue.

(d) Assistance under paragraph (a) of this section, when directed by the Associate Director or the Regional Director, shall not affect the authority of any Federal agency to provide disaster assistance independent of the Act. However, disaster assistance by other Federal agencies is subject to the coordination of the Federal Coordinating Officer.

(e) In carrying out the purposes of the Act, any Federal agency may accept and utilize, with the consent of the State or local government, the services, personnel, materials, and facilities of any State or local government, agency, office, or employee. Such utilization shall not make such services, materials, or facilities Federal in nature nor make the State or local government or agency an arm or agent of the Federal Government.

(f) Eligible work under the provisions of the Act is not performed by or under the direct supervision of a Federal agency except when the State or local government lacks the capability to perform or contract for the approved work or the Regional Director determines that direct assistance is necessary to meet an immediate threat to life, health, or safety. (See § 205.121, Direct Federal Assistance.)

§ 205.6 Federal equipment and supplies.

(a) In any major disaster or emergency, the Associate Director or the Regional Director may direct Federal agencies to donate or loan their equipment and supplies to State and local governments for use and distribution by them for the purposes of the Act.

(b) A donation or loan may include equipment and supplies determined under applicable laws and regulations to be surplus to the needs and responsibilities of the Federal Government. The State shall certify that the surplus property is usable and necessary for current disaster purposes in order to receive a donation or loan. Such a donation or loan is made in accordance with procedures prescribed by the General Services Administration.

(c) In providing assistance under the Act, the Federal Government shall use surplus Federal property to the fullest extent feasible.

§ 205.7 Use and coordination of relief organizations.

(a) In providing relief and assistance under the Act, the Associate Director or the Federal Coordinating Officer may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations in the distribution of medicine, food, supplies, or other items and in the restoration, rehabilitation, or reconstruction of community services and essential facilities, whenever the Associate Director or the Federal Coordinating Officer finds that such utilization is necessary.

(b) In any major disaster or emergency, the Regional Director may provide assistance by distributing or rendering through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations medicine, food, and other consumable supplies or emergency services.

(c) The Associate Director may enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations under which the Federal Coordinating

Officer may coordinate the disaster relief activities of such organizations whenever the organizations are engaged in providing relief during and after a major disaster or emergency. Any agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with § 205.16 (non-discrimination) and § 205.10 (Duplication of Benefits) of these regulations and such other regulations as the Associate Director may issue.

(d) Nothing contained in this section shall be construed to limit or in any way affect the responsibilities of the American National Red Cross as stated in Pub. L. 58-4, approved January 5, 1905 (33 Stat. 599).

§§ 205.8—205.9 [Reserved]

§ 205.10 Duplication of benefits.

(a) *Purpose.* This section establishes the policies for implementing section 315 of the Disaster Relief Act, entitled Duplication of Benefits.

(b) *Agency policy.* It is FEMA policy:

(1) To prevent duplication of benefits between its own programs and insurance benefits, and between its own programs and other disaster assistance, by providing assistance under the Act only when other assistance, which is the primary responsibility of another State or Federal agency to provide, will be significantly delayed or is unavailable, and when the delay or unavailability is not caused by the applicant;

(2) To examine a debt resulting from duplication to determine that the likelihood of collecting the debt and the best interests of the United States government justify taking the necessary recovery actions to remedy duplication which has occurred when other assistance has become available;

(3) To assure, by consultation with other Federal agencies and by performing selected quality control reviews, that the other disaster relief agencies establish and follow policies and procedures to prevent and remedy duplication among their programs, other programs, and insurance benefits; and

(4) To coordinate the effort of agencies providing assistance so that each agency understands the prevention and remedial policies of the others and is able to fulfill its own responsibilities regarding duplication of benefits.

(c) *Delivery sequence.* (1) Duplication occurs when an agency has provided assistance which was the primary responsibility of another agency, and the agency with primary responsibility later provides assistance. A delivery sequence establishes the order in which disaster relief agencies and organizations provide assistance. The specific sequence, in accordance with the mandates of the assistance programs, is to be followed in the delivery of assistance. When the delivery sequence has been disrupted, the disrupting agency is responsible for rectifying the duplication. The delivery sequence pertains to that period of time in the recovery phase when most of the traditional disaster assistance programs are available.

(2) The delivery sequence is, in order of delivery:

First—volunteer agencies' emergency assistance (except expendable items such as clothes, linens, and basic kitchenware); insurance (including flood insurance);

Second—temporary housing assistance (to include provision of a housing unit and minimal repairs);

Third—Small Business Administration and Farmers Home Administration disaster loans;

Fourth—Individuals and Family Grant program assistance;

Fifth—volunteer agencies' "additional assistance" programs; and

Sixth—the "Cora Brown Fund."

(3) Two significant points about the delivery sequence are that:

(i) Each assistance agency should, in turn, offer and be responsible for delivering assistance without regard to duplication with a program later in the sequence; and

(ii) The sequence itself determines what types of assistance can duplicate other assistance (e.g., a Federal program can duplicate insurance benefits, however, insurance benefits cannot duplicate the Federal assistance). An agency's position in the sequence determines the order in which it should provide assistance and what other resources it must consider before it does so.

(4) If following the delivery sequence concept would adversely affect the timely receipt of essential assistance by a disaster victim, the following exception may be invoked. When there is a time delay, an agency may offer assistance which is the primary responsibility of another agency. There may be cases when an agency (Agency B) delivers assistance which is normally the primary responsibility of another agency (Agency A) because Agency A has, for good cause, denied assistance. After the assistance is delivered, Agency A re-opens the case. If the primary response Agency A then provides assistance, that Agency A is responsible for coordinating with Agency B to either: (i) Assist Agency B in preventing the duplication of benefits or (ii) in the case where the disaster victim has refused assistance from Agency A, notify Agency B that it must recover assistance previously provided.

(d) *Program Guidance*—(1) *Programs Under the Act v. Other Agency Assistance.*(i) In making an eligibility determination, the FEMA Regional Director, in the case of Federally operated programs, or the State, in the case of State operated programs, shall determine whether assistance is the primary responsibility of another agency to provide, according to the delivery sequence; and determine whether that primary response agency can provide assistance in a timely way.

(ii) If it is determined that timely assistance can be provided by the agency with primary responsibility, refrain from providing assistance under the Act. If it is determined that assistance from the agency with primary responsibility will be significantly delayed, assistance under the Act may be provided, but then must be recovered from the applicant when the other assistance becomes available.

(2) *Programs Under the Act v. Insurance.* In making an eligibility determination, the FEMA Regional Director or State shall:

(i) Remind the applicant about his/her responsibility to pursue an adequate settlement. The applicant must provide information concerning insurance recoveries. The burden of proof is on the applicant to prove that, despite conditions of settlement or expected settlement, the need for disaster assistance is paramount;

(ii) Determine whether the applicant's insurance settlement will be sufficient to cover the loss or need without disaster assistance; and

(iii) Determine whether insurance benefits (including flood insurance) will be provided in a timely way, thus precluding the need for disaster assistance, or whether assistance should be provided immediately to prevent a hardship. Where flood insurance is involved, the Regional Director shall coordinate with the Federal Insurance Administration. The purpose of this coordination is to obtain information about flood insurance coverage and settlements.

(3) *Random sample.* Each disaster assistance agency is responsible for preventing and rectifying duplication of benefits under the coordination of the Federal Coordinating Officer (FCO) and the general authority of section 315. To determine whether duplication has occurred and established procedures have been followed, the Regional Director shall, within 90 days after the close of the disaster assistance programs' application period, for selected disaster declarations, examine on a random sample basis, FEMA's and other government and voluntary agencies' case files and document the findings in writing.

(4) *Duplication when assistance under the Act is involved.* If duplication is discovered, the Regional Director shall determine whether the duplicating agency followed its own remedial procedures.

(i) If the duplicating agency followed its procedures and was successful in correcting the duplication, the Regional Director will take no further action. If the agency was not successful in correcting the duplication, and the Regional Director is satisfied that the duplicating agency followed its remedial procedures, no further action will be taken.

(ii) If the duplicating agency did not follow its duplication of benefits procedures, or the Regional Director is not satisfied that the procedures were followed in an acceptable manner, then the Regional Director shall provide an opportunity for the agency to take the required corrective action. If the agency cannot fulfill its responsibilities for remedial action, the Regional Director shall notify the recipient of the excess assistance, and after examining the debt, if it is determined that the likelihood of collecting the debt and the best interests of the United States government justify taking the necessary recovery actions, then take those recovery actions in conjunction with agency representatives for each identified case in the random sample (or larger universe, at the Regional Director's discretion).

(5) *Duplication when assistance under other authorities is involved.* When the random sample shows evidence that duplication has occurred and corrective action is required, the Regional Director and the FCO shall urge the duplicating agency to follow its own procedures to take corrective action, and shall work with the agency toward that end. Under his/her authority in section 315, the Regional Director shall require the duplicating agency to report to him/her on its attempt to correct the duplications identified in the sample.

(c) *Recovering FEMA funds: Debt collection.* FEMA's Debt Collection Regulations (44 CFR Part 11) and policy statements give agency debt collection officers and the Comptroller certain responsibilities in recovering funds due to FEMA. In addition, they specify thresholds for compromise, suspension, and termination of debts. These regulations prescribe the procedures FEMA will follow to recover duplications FEMA is responsible for acting upon.

[51 FR 13502, Apr. 21, 1986]

§ 205.11 Nonliability.

The Federal Government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

§ 205.12 Criminal and civil penalties.

(a) Any individual who fraudulently or willfully misstates any fact in connection with a request for assistance under the Act shall be fined not more than $10,000 or imprisoned for not more than one year or both for each violation.

(b) Any individual who knowingly violates any order or regulation under the Act shall be subject to a civil penalty of not more than $5,000 for each violation.

(c) Whoever knowingly missapplies the proceeds of a loan or other cash benefit obtained under any section of the Act shall be subject to a fine in an amount equal to one and one-half the times the original principal amount of the loan or cash benefit.

§ 205.13 Reviews and reports.

(a) The Associate Director shall review the activities of Federal agencies and State and local governments providing disaster assistance, in order to assure maximum coordination and effectiveness of such programs, and shall report to Congress from time to time on these activities.

(b) In carrying out this provision, the Associate Director may direct Federal agencies to submit reports relating to their disaster assistance activities. The Associate Director or the Regional Director may request similar reports from the States relating to these activities on the part of State and local governments. Additionally, the Associate Director may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

§ 205.14 Appeals.

Any appeal is a request for reconsideration of a determination on any action related to Federal assistance under the Act and these regulations. Specific procedures for appeals are contained in the relevant subparts of these regulations.

§ 205.15 Effective date.

(a) These regulations are effective and supersede existing regulations as of September 10, 1980.

(b) Any action taken in accordance with previous regulations remains valid.

§ 205.16 Nondiscrimination in disaster assistance.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with Regulation 44 CFR Part 7.

(b) All personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, religion, sex, color, age, economic status, or national origin.

(c) As a condition of participation in the distribution of assistance or supplies under the Act or of receiving assistance under the Act, government bodies, and other organizations shall provide a written assurance of their intent to comply with regulations relating to non-discrimination promulgated by the President or the Associate Director and shall comply with such other regulations applicable to activities within an area affected by major disaster or emergency as the Associate Director deems necessary for the effective coordination of relief efforts. The provisions to be included in every Federal-State Agreement shall be the provisions provided by Executive Order 11246 as amended by Executive Orders 11375, 11478 and 12086.

§ 205.17 Emergency mass care.

Emergency mass care, such as emergency medical care, emergency shelter, emergency provision of food, water and medicine, and other essential needs, are normally provided by the Red Cross or other voluntary organizations and Federal emergency assistance will be approved by the Regional Director only upon an affirmative showing that such organizations are not providing all or part of emergency mass care essential needs.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979 and 47 FR 55757, Dec. 13, 1982; 48 FR 51057, Nov. 4, 1983]

Subpart B—[Reserved]

Subpart C—The Declaration Process

SOURCE: 48 FR 51057, Nov. 4, 1983, unless otherwise noted.

§ 205.30 Purpose.

The purpose of this subpart is to describe the process leading to a Presidential declaration of a major disaster or an emergency and the actions triggered by such a declaration.

§ 205.31 Definitions.

All definitions listed in Pub. L. 93-288 and in § 205.2 apply. In addition, the following definitions apply:

(a) *Associate Director*: The Associate Director, State and Local Programs and Support, Federal Emergency Management Agency, or his/her designated representative.

(b) *Commitment*: Certification by the Governor in support of his request for a declaration of a major disaster or an emergency, pledging for the current major disaster or emergency, State and local government obligations and expenditures, which are disaster-related, extraordinary and unforeseen (of which the State's pledges must be a significant proportion), and stating that such obligations and expenditures, identified as nonreimbursable by Federal funds, are a reasonable amount of funds of such State and local governments for alleviating the damage, loss, hardship or suffering resulting from such major disaster or emergency.

(c) *Emergency support team*: Organized group of program and support personnel established by the Regional Director or the Associate Director to be deployed in an area affected by a major disaster or emergency to assist the Federal Coordinating Officer (FCO) in carrying out his/her responsibilities under the Act.

(d) *FEMA-State agreement*: A formal legal document stating the understandings, commitments, and binding conditions for assistance applicable as the result of the major disaster or emergency declared by the President.

(e) *Incident*: Any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landside, mudslide, snowstorm, drought, fire, explosion, or other catastrophe which causes damage or hardship that may result in a Presidential declaration of a major disaster or an emergency.

(f) *Incident period*: As determined at the discretion of the Associate Director, the time interval stated in the FEMA-State Agreement during which the disaster-causing incident occurs. No Federal assistance under Pub. L. 93-288 shall be approved unless the damage or hardship to be alleviated resulted from the disaster-causing incident which took place during the incident period. The incident period for emergencies starts at 12:01 a.m., on the date of the declaration by the President unless otherwise specified in the declaration document. The termination date of an incident period may not be known at the time the FEMA-State Agreement is signed. However, at such time as the termination date is determined by FEMA, it will be added to the Agreement by amendment.

(g) *Individual assistance*: Supplementary Federal assistance provided under Pub. L. 93-288 to individuals and families adversely affected by a major disaster or an emergency. Such assistance may be provided directly by the Federal Government or through State or local governmelts or disaster relief organizations. For further information, see Subpart D of these regulations.

(h) *Mission assignment*: Work order or request for performance of work issued by the Regional Director, Associate Director or Director to a Federal agency directing completion by that agency of specified tasks and citing funding, other managerial controls or guidance.

(i) *Public assistance*: Supplementary Federal assistance provided under Pub. L. 93-288 to State and local governments or certain private, nonprofit organizations other than assistance for the direct benefit of individuals and families. For further information, see Subpart E of these regulations.

§ 205.32 Policy.

(a) It is the policy of the Federal Emergency Management Agency (FEMA) to provide an orderly and continuing means of assistance by the Federal Goverment to supplement the efforts of the State and local governments in carrying out their responsibilities to alleviate the suffering and damage that result from declared major disasters and emergencies.

(b) The policies listed in § 205.3 apply. It is also the policy of FEMA in approving disaster assistance, to encourage States and local governments to seek permanent solutions to problems in areas which are disaster-prone from sources other than the President's Disaster Relief Fund. Failure to properly implement State hazard mitigation plans approved by FEMA as the result of a major disaster or emergency may contribute to losses, hardships or damages resulting from future catastrophes or emergencies. The resulting damages will be assessed and considered whenever applicable in processing any requests for a declaration of a major disaster or emergency.

(c) It is the policy of FEMA to recommend a denial of a major disaster request when the requested assistance can be provided by other Federal agencies under their statutory authorities and from volunteer agencies or groups.

§ 205.33 Requests for major disaster declarations.

(a) When a catastrophe occurs in a State, the Governor may request that the President declare a major disaster for the State upon the Governor's finding that:

(1) The situation is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments; and

(2) Federal assistance under the Act is necessary to supplement the efforts and available resources of the State, local governments, and disaster relief organizations.

(b) Only the Governor of a State, or the Acting Governor in his/her absence, may request a major disaster declaration. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgment and processing. Use of the formats suggested by the Associate Director for such requests will assure coverage of essential information and should avoid delays in processing. These suggested formats have been published by the Associate Director in the FEDERAL REGISTER and shall be updated as necessary. The complete request must be submitted within 30 days of the occurrence of the incident in order to be considered. (See also § 205.44)

(c) The completed request shall include:

(1) Confirmation that the Governor has taken appropriate action under State law and has directed the execution of the State emergency plan;

(2) An estimate of the amount and severity of damages and losses stating the impact of the disaster on the public and private sector;

(3) Information describing the extent and nature of State and local resources which have been or will be used to alleviate conditions of the disaster, stating specifically those activities for which no Federal funding will be requested;

(4) Preliminary estimates of the types and amount of supplementary Federal disaster assistance needed under the Act; and

(5) Certification by the Governor that State and local government obligations and expenditures for the disaster (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of funds for alleviating the damage, loss, hardship or suffering resulting from such disaster. The required certification of the State and local government commitments must be documented by filling out the "commitments" section of the formats referred to in paragraph (b) of this section.

(d) For those catastrophies of unusual severity and magnitude when field damage assessments are not necessary to determine the requirement for supplemental Federal assistance, the Governor or Acting Governor may send a telegram through the Regional director for a declaration of a major disaster. In the event the FEMA Regional Office is severely impacted by the catastrophe, the telegram may be addressed to the Director of FEMA. The telegram must indicate a finding in accordance with § 205.33(a), and must include as a minimum the information requested by § 305.33(c) (1), (3) and (5). Upon receipt of such a telegram, the Regional Director shall expedite the processing of reports and recommendations to the President. Notification to the Governor of the Presidential declaration shall be in accordance with 44 CFR 205.37. The Associate Director shall assure that documentation of the declaration is later assembled to comply fully with these regulations.

(Approved by Office of Management and Budget under control number 3067-0113)

§ 205.34 Requests for emergency declarations.

(a) When a catastrophe occurs or threatens to occur in a State, the Governor may request that the President declare an emergency upon the Governor's finding that the situation:

(1) Is of such severity and magnitude that effective response is beyond the capability of the State and the affected local government(s); and

(2) Requires supplementary Federal emergency assistance to save lives and protect property, health and safety, or to avert or lessen the threat of a disaster and which should be provided by the Federal Government because of the pressures of time or the unique capabilities of the Federal Government.

(b) Only the Governor of a State, or the Acting Governor in his/her absence, may request that the President declare an emergency. The Governor should submit the request to the President through the appropriate Regional Director to ensure prompt acknowledgment and processing. Use of the formats suggested by FEMA for such requests will assure coverage of essential information and should avoid delays in processing. The complete request must be submitted within 30 days of the occurrence of the incident in order to be considered. (See also § 205.44)

(c) The complete request shall include:

(1) Information describing the State and local efforts and resources which

have been or will be used to alleviate the emergency, including those for which no Federal funding will be requested;

(2) Identification of the particular type and specific extent of Federal aid required, and of any proposed cost sharing; and

(3) An assessment by the Governor that the capabilities and resources of the State and local government(s) have been or are being fully committed to cope with the catastrophe. Such capabilities and resources need not be exhausted, but State and local government efforts, as deemed appropriate by FEMA, are necessary before FEMA emergency assistance can be authorized.

(Approved by the Office of Management and Budget under control number 3067-0113)

§ 205.35 Processing requests for declarations of a major disaster or emergency.

(a) The Regional Director shall provide written acknowledgment of the Governor's request. Based on a FEMA investigation, which may include damage assessments of the affected area(s) and consultations with appropriate State and Federal officials and other interested parties, the Regional Director shall promptly submit a report and a recommendation to the FEMA Director through the Associate Director.

(b) The Director shall forward the Governor's request together with a report and a recommendation to the President.

(1) *Major disaster request.* The recommendation will be based on a report which will indicate whether or not the situation is of such severity and magnitude so as to be beyond the capabilities of the State and its local governments and whether or not Federal assistance under Pub. L. 93-288 is necessary to supplement the efforts and available resources of the State and local governments, and other disaster relief organizations or activities.

(2) *Emergency request.* The recommendation will be based on a report which will indicate whether or not Federal emergency assistance under Pub. L. 93-288 is necessary to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster, which because of the pressures of time or because of the unique capabilities of a Federal agency, should be provided by the Federal Government.

§ 205.36 Presidential determination.

(a) The Governor's request for a major disaster declaration may result in either a Presidential declaration of a major disaster or an emergency.

(b) The Governor's request for an emergency declaration may result in a Presidential declaration of an emergency.

§ 205.37 Notification.

(a) The Governor will be promptly notified by the Director or his/her designee of a declaration by the President that an emergency or a major disaster exists. FEMA also will notify other Federal agencies and other interested parties.

(b) The Governor will be promptly notified by the Director or his/her designee of a determination that the Governor's request does not justify the use of the authorities of Pub. L. 93-288.

§ 205.38 Appeal.

When a request for a major disaster declaration or for an emergency declaration is denied, the Governor may appeal the decision. An appeal must be made within 30 days after the date of the letter denying the request. (See also § 205.44). This one-time request for reconsideration, along with appropriate additional information, is submitted to the President through the appropriate Regional Director. The processing of this request is similar to the initial request.

§ 205.39 FEMA-State Agreement.

(a) *General.* The FEMA-State Agreement states the understandings, commitments, and conditions for assistance under which FEMA disaster assistance shall be provided. This Agreement imposes binding obligations on FEMA, States and their local governments in the form of conditions for assistance which are legally enforceable.

However, such conditions may be modified by a properly executed amendment to the FEMA-State Agreement. No FEMA funding may be authorized or provided to any grantees or other recipients, and authorized by mission assignment until such time as this Agreement for the Presidential delcaration has been signed and is fully in effect.

(b) *Major disasters*. Upon the declaration of a major disaster, the Governor, acting for the State, and the FEMA Regional Director or his/her designee, acting for the Federal Government, shall execute a FEMA-State Agreement. This Agreement describes the incident period for which assistance will be made available, the type and extent of the Federal assistance to be made available, and contains the commitment of the State and local government(s) with respect to the amount of funds to be expended in alleviating damage and suffering caused by the major disaster. The Agreement also contains such other terms and conditions consistent with the declaration and the provisions of applicable laws, Executive orders and regulations. The Governor's Authorized Representative and the Regional Director or his/her designee may execute subsequent amendments to the Agreement for the same major disaster.

(c) *Emergencies*. Upon the declaration of an emergency, the Governor, acting for the State, and the FEMA Regional Director or his/her designee, acting for the Federal Government, shall execute a FEMA-State Agreement. This Agreement contains the necessary terms and conditions consistent with the declaration and the provisions of applicable laws, Executive orders and regulations. This Agreement specifies the beginning and the end of the incident period, identities the type and extent of Federal assistance and includes any details unique to the current emergency. The Governor's Authorized Representative and the Regional Director or his/her designee may execute subsequent amendments to the Agreement for the same emergency. The Federal assistance specified in the Agreement or an amendment is the only assistance eligible for Federal funding or reimbursement under Pub. L. 93-288, as amended.

(d) *Transfer of funds*. In the event that funds are to be transferred to a State for disaster relief purposes, the FEMA-State Agreement shall contain, and the State and its political subdivisions shall agree to, the following conditions for assistance:

> If a State, local government, or eligible private, nonprofit organization violates any of the conditions of disaster relief assistance under the Act, this Agreement, or applicable Federal regulations, the Associate Director shall notify the State that additional financial assistance for the project in which the violation occurred will be withheld until such violation has been corrected to the satisfaction of the Associate Director. If the Associate Director is not satisfied with the corrective action taken in response to such notification, then the Associate Director will notify the State that further financial assistance for the project in which the violation occurred will be withheld until adequate corrective action is taken. In addition, the Associate Director may also withhold all or any portion of financial assistance which has been or is to be made available to the State, local governments, or eligible private, nonprofit organizations for other disaster relief projects under the Act, this or other Agreements, and applicable Federal regulations until adequate action is taken. The State further agrees that FEMA or State auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall for the purpose of audit and examination have access to any books, documents, papers and records of any recipients of Federal disaster assistance and of any persons or entities which perform any activity which is reimbursed to any extent with Federal disaster assistance funds distributed under the authority of the Act.

(e) *Other conditions for assistance*. All FEMA-State Agreements shall also contain the following:

(1) The State agrees, on its behalf and on behalf of its political subdivisions and other recipients of Federal disaster assistance, to cooperate with the Federal government in seeking recovery of funds which are expended in alleviating the damages and suffering caused by any declared major disaster or emergency against any party or parties whose acts or omissions may in any way have caused or contributed to

the damage or hardship for which Federal assistance is provided pursuant to a Presidential declaration of major disaster or emergency.

(2) The State will establish and maintain an active State program of nondiscrimination in disaster assistance, outlined in 44 CFR 205.16. This program will encompass all State and local government actions pursuant to this Agreement.

(3) The State will establish and maintain a program to assure that State and local government recipients of Federal disaster assistance comply with the Department of Housing and Urban Development (HUD) Consolidated List of Debarred, Suspended and Ineligible Contractors. This program also will encompass all State and local contracts pursuant to this Agreement.

(4) No members of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon; *Provided, however, That* this provision shall not be construed to extend to any contract made with a corporation for its general benefit.

(f) *Typical conditions for assistance.* As determined necessary by the Associate Director, certain typical conditions for assistance may be included in the FEMA-State Agreement. However, some changes in wording may be made to fit the current major disaster or emergency. These conditions for assistance are:

(1) The State agrees that, as a condition for any Federal loan or grant, the State or that applicant shall evaluate the natural hazards in the areas in which the proceeds of the grants or loans are to be used and shall make appropriate recommendations to mitigate such hazards for federally assisted projects. The State further agrees:

(i) To prepare and submit, not later than 180 days after the declaration, to the Regional Director for concurrence, a hazard mitigation plan or plans for the FEMA designated areas; and

(ii) To follow up with applicants, within State capabilities, to assure that, as a condition for any grant or loan under the Act, appropriate hazard mitigation actions are taken; and

(iii) To review and update as necessary disaster mitigation portions of the State emergency plan.

The Regional Director agrees to make Federal technical advice and assistance available to support the planning efforts and actions. The State understands that future Federal disaster assistance may be curtailed in situations where hazard mitigation plans have not been implemented properly.

(2) Within his/her authorities, the Governor shall ensure, through the State agency responsible for regulation of the insurance industry, that insurance companies make full payment of eligible insurance benefits to disaster victims. The State also shall take all reasonable steps to ensure that disaster victims are aware of procedures for filing insurance claims, are informed of any State procedures instituted for assisting insured disaster victims, and are aware of their responsibility to repay government assistance which is duplicated by insurance proceeds.

(3) The mandatory FEMA-State Agreement language at § 205.39(e)(1) shall, when determined necessary by the Regional Director, be amended to address any of the following issues which the Regional Director deems appropriate: The need for the State to pursue recoveries against responsible parties; reimbursement to the Federal government from any recoveries from responsible parties; review by the Federal government of proposed settlements between the State, its political subdivisions, or other recipients of Federal disaster assistance and any responsible parties; assignment to the Federal government of any rights of recovery which the State, its political subdivisions, or any other recipients of Federal disaster assistance might have against any responsible parties; intervention by the United States in any action instituted by the State, its political subdivisions, or any other recipients of Federal disaster assistance against any responsible parties; and other related issues.

(4) Since Federal operational and financial responsibility for temporary housing assistance shall not exceed eighteen (18) months from the date of

the declaration by the President, the State agrees to accept such responsibility upon expiration of the Federal responsibility.

(5) For any program administered by the State involving FEMA funding, the State agrees to establish and maintain an active State program to avoid duplication of Federal benefits in disaster assistance. The State further agrees to take necessary action to recover any FEMA funding administered by the State in those situations where such duplication is reported or appears likely to have occurred.

§ 205.40 Designation of affected areas and eligible assistance.

(a) After a declaration by the President, the Associate Director shall designate the disaster-affected areas eligible for supplementary Federal assistance under Pub. L. 93-288 and shall publish these designations in the FEDERAL REGISTER. A disaster-affected area designated by the Associate Director includes all local government jurisdictions within its boundaries. Unless specifically limited in the declaration documents, the Associate Director shall also determine and designate the types of assistance to be made available in the designated areas. These designations shall be based on the Governor's request or supplemental requests for assistance, taking into consideration available information and FEMA assessments of requirements. In addition to the areas designated eligible for Individual Assistance, the Associate Director may designate adjacent areas eligible for Individual Assistance unless such adjacent areas are specifically excluded in the Governor's request. However, the designation of unrequested areas as adjacent areas for Individual Assistance will not be made until coordination has been made by FEMA with the Governor or the Governor's Authorized Representative. The Associate Director may, at his/her discretion, designate all or only portions of the areas requested by the Governor as eligible for supplementary Federal assistance. In addition, the Associate Director may, at his/her discretion, or as directed by the President in the declaration letter, authorize all or only portions of the types of supplementary Federal assistance requested by the Governor. Determinations by the Associate Director of the types and extent of FEMA disaster assistance to be provided and of the areas eligible to receive such assistance, are based upon findings whether, in any particular area, the damage involved and its effects are of such severity and magnitude as to be beyond the response capabilities of the State, the affected local governments, and other potential recipients of supplementary Federal assistance.

(b) The Regional Director will promptly notify the Governor of the Associate Director's designations. In those instances where the type of assistance or certain areas requested by the Governor are not designated or authorized by the Associate Director, the Governor, or the Governor's Authorized Representative, may appeal the decision. An appeal must be made within 30 days of the date of the written notification by submitting a formal written appeal. (See also § 205.44.) This one-time request for reconsideration, along with justification and/or additional information, is sent to the Associate Director through the appropriate Regional Director.

(c) After a declaration by the President, the Governor, or the Governor's Authorized Representative, may request that additional areas or types of supplementary Federal assistance be designated by the Associate Director. Such requests shall be accompanied by appropriate commitments by State and local governments and assessments to demonstrate that the requested designations are justified and that the unmet needs are beyond State and local capabilities without supplementary Federal assistance.

§ 205.41 Initiation of Federal assistance.

(a) *Federal Coordinating Officer.* Upon a declaration of a major disaster or of an emergency by the President, the Director, or in his absence, the Deputy Director, or alternatively, the Associate Director shall appoint a Federal Coordinating Officer (FCO) who shall initiate action immediately to assure that Federal assistance is provided in accordance with the declaration, applicable laws, regulations, and the FEMA-State Agreement.

(b) *Designees.* In the FEMA-State Agreement, the Governor shall appoint a State Coordinating Officer (SCO) and also shall designate the Governor's Authorized Representative (GAR), who shall administer Federal disaster assistance programs on behalf of the State and local governments and other grant or loan recipients. The GAR is responsible for the State compliance with the FEMA-State Agreement.

[48 FR 51057, Nov. 4, 1983, as amended at 50 FR 42023, Oct. 17, 1985]

§ 205.42 Responsibilities of the Coordinating Officer.

(a) Following a declaration of a major disaster or an emergency, the Federal Coordinating Officer (FCO) shall:

(1) Make an initial appraisal of the types of assistance most urgently needed;

(2) In coordination with the SCO, establish field offices and Disaster Application Centers as necessary to coordinate and monitor assistance programs, disseminate information, accept applications, and counsel individuals, families and businesses concerning available assistance;

(3) Coordinate the administration of relief, including activities of State and local governments, activities of Federal agencies as well as those of the American Red Cross, the Salvation Army, the Mennonite Disaster Service and other voluntary relief organizations which agree to operate under the FCO's advice and direction;

(4) Undertake appropriate action to make certain that all of the Federal agencies are carrying out their appropriate disaster assistance roles under their own legislative authorities and operational policies; and

(5) Take other action, consistent with the provisions of the Act, as necessary to assist citizens and public officials in promptly obtaining assistance to which they are entitled.

(b) The State Coordinating Officer (SCO) coordinates State and local disaster assistance efforts with those of the Federal Government working closely with the FCO. The SCO is the principal point of contact regarding coordination of State and local disaster relief activities, and implementation of the State emergency plan. The functions, responsibilities, and authorities of the SCO are set forth in the State emergency plan.

[48 FR 51057, Nov. 4, 1983, as amended at 51 FR 34606, Sept. 30, 1986]

§ 205.43 Emergency support teams.

The Associate Director or Regional Director shall form emergency support teams of Federal personnel to send into an area affected by a major disaster or emergency. The Federal Coordinating Officer may request that the Regional Director activate appropriate emergency support teams. These emergency support teams assist the Regional Director or the Federal Coordinating Officer in carrying out his/her responsibilities under the Act and these regulations. Any Federal agency is authorized by the Act to detail personnel within the agency's administrative jurisdiction to temporary duty with the emergency support teams. The Regional Director or the Associate Director determines whether the detail is on a reimbursable or nonreimbursable basis. Each detail shall be without loss of seniority, pay, or other employee status. Except under unusual circumstances, as determined by the Regional Director, such emergency support teams shall be organized and trained by each Regional Director to meet the needs for emergency assistance applicable to his/her Region. When requested by the Regional Director, State, local, or volunteer agencies may, as necessary, provide personnel to be deployed with the emergency support teams.

§ 205.44 Time limitations.

The 30-day period referred to in §§ 205.33(b), 205.34(b), 205.38 and 205.40(b) may be extended by the Associate Director provided that a request with proper justification for such an extension is made by the Governor during this 30-day period. In general, proper justification would include the inability to gather new and/ or additional information required to support the action being requested in the cited sections.

Subpart D—Individual Assistance

§ 205.52 Temporary housing assistance.

(a) *Purpose.* This section prescribes the policy to be followed by the Federal Government or any other organization when implementing section 404, Disaster Relief Act of 1974, 42 U.S.C. 5174.

(b) *Program intent.* Assistance under this program is made available to applicants who require temporary housing as a result of a major disaster or emergency that is declared by the President. Eligibility for assistance is based on need created by disaster-related uninhabitability of a primary residence or other disaster-related displacement, combined with a lack of adequate insurance coverage. Eligible applicants may be paid for authorized accommodations and/or repairs. In the interest of assisting the greatest number of people in the shortest possible time, applicants who are able to do so will be encouraged to make their own arrangements for temporary housing (e.g., renting an apartment or contracting for minimal repairs), using the funds provided by this program. Ineligibility relates only to the criteria for temporary housing assistance; denial of such assistance does not imply that repairs to a residence are not required. Although numerous instances of minor damage may cause some inconvenience to the applicant, the determining eligibility factor must be the habitability of the residence. FEMA has also determined that it is reasonable to expect applicants or their landlords to make some repairs of a minor nature.

(c) *Definitions.* (1) "Adequate alternate housing" means housing that:

(i) Accommodates the needs of the applicant(s)/occupant(s);

(ii) Is within reasonable commuting distance of work, school or other centers of household activity;

(iii) Is within the financial ability of the applicant(s)/occupant(s); and

(iv) Does not impose an undue burden upon the applicant(s)/occupant(s) in the realization of a reasonable permanent housing plan.

(2) "Effective date of assistance" means either the date the eligible applicant obtained his/her own FEMA approved temporary housing or the date FEMA provides assistance but, where applicable, only after appropriate insurance benefits are exhausted.

(3) "Essential living area" means that area of the residence essential to normal living, i.e., kitchen, one bathroom, dining area, living room, entrances and exits, and essential sleeping areas. It does not include family rooms, guest rooms, garages, or other nonessential areas, unless hazards exist in these areas which impact the safety of the essential living area.

(4) "Fair market rent" means a reasonable amount to pay in the local area for the size and type of accommodations provided. (Formula is provided in paragraph (g)(2) of this section.)

(5) "Financial ability" is the determination of the applicant(s)/occupant(s) ability to pay housing costs. The determination is based upon the amount paid for housing before the disaster, provided the household income has not changed subsequent to or as a result of the disaster or 25 percent of gross post disaster income if the household income change. When computing financial ability, extreme or unusual financial circumstances may be considered by the Regional Director.

(6) "Household" means all residents of the predisaster residence who request temporary housing assistance, plus any additions during the temporary housing period, such as infants, spouses or part-time residents who were not present at the time of the disaster but who are expected to return during the temporary housing period.

(7) "Housing costs" means shelter rent and mortgage payments including principal, interest, real estate taxes, real property insurance, and utility costs, where appropriate.

(8) "Occupant" means an eligible applicant residing in temporary housing provided under this section.

(9) "Owner-occupied" means that the residence is occupied by: The legal owner; a person who does not hold formal title to the residence and pays no rent but is responsible for the pay-

ment of taxes, maintenance of the residence; or a person who has lifetime occupancy rights with formal title vested in another.

(10) "Primary residence" means the dwelling where the applicant normally lives during the major portion of the calendar year, or a dwelling which is required because of proximity to employment.

(d) *Duplication of benefits*—(1) *Requirement to avoid duplication.* Assistance under section 404 shall not be made available to an applicant if such assistance has been provided by any other source. If any State or local government or voluntary agency has provided temporary housing, the assistance under this section begins at the expiration of such assistance and may continue rent-free, not to exceed twelve months provided the criteria for continued assistance, paragraph (k)(3) of this section, are met. If it is determined that temporary housing assistance will be provided under this section, notification shall be given to those agencies which have the potential to duplicate such assistance. In the instance of insured applicants, assistance shall not be provided unless:

(i) Payment of the applicable benefits has been significantly delayed;

(ii) Applicable benefits have been exhausted;

(iii) Applicable benefits are insufficient to cover the temporary housing need; or

(iv) Housing or the required services are not available on the private market.

(2) *Recovery of funds.* Prior to provision of assistance, the applicant must agree to repay to FEMA from insurance proceeds or recoveries from any other source an amount equivalent to the value of the temporary housing assistance provided. In no event shall the amount repaid to FEMA exceed the amount recovered by the applicant. All claims shall be collected in accordance with Agency Regulations at 44 CFR Part 11, Subpart C and procedures for debt collection.

(e) *Applications*—(1) *Application period.* Applications for temporary housing assistance shall be accepted for a 60-day period following the date of the declaration of a major disaster or emergency, unless additional time for submission of applications is authorized by the Regional Director in order to achieve uniformity of application periods in contiguous States. After the established period, applications shall be accepted; however, processing shall not be completed unless authorized by the Regional Director on a case-by-case basis.

(Approved by the Office of Management and Budget under OMB Control Number 3067-0009)

(2) *Household composition.* Members of a household shall be included on a single application and be provided a single temporary housing residence unless it is administratively determined that the size of the household requires that more than one residence be provided.

(f) *General eligibility guidelines.* Temporary housing assistance may be made available to those applicants who, as a result of a major disaster or emergency declared by the President, are qualified for such assistance.

(1) *Conditions of eligibility.* Temporary housing assistance may be provided only when *both* of the following conditions are met:

(i) The applicant's primary residence has been made uninhabitable or the applicant has been displaced as the result of a major disaster or emergency because:

(A) The residence has been destroyed, essential utility service has been interrupted, or the essential living area has been damaged as a result of the disaster to such an extent as to constitute a serious health or safety hazard which did not exist prior to the disaster. The Regional Director shall prepare additional guidelines when necessary to respond to a particular disaster;

(B) The residence has been made inaccessible as a result of the incident to the extent that the applicant cannot reasonably be expected to gain entry due to the disruption or destruction of transportation routes, other impediments to access, or restrictions placed on movement by a responsible official due to continued health and safety issues.

(C) The owner of the applicant's residence requires the residence to meet his/her personal needs because the owner's predisaster residence was made uninhabitable as a result of the disaster;

(D) Financial hardship resulting from the disaster has led to eviction or dispossession; or

(E) Other circumstances resulting from the disaster, as determined by the Regional Director, prevent the applicant from occupying his/her predisaster primary residence.

(ii) Insured applicants have made every reasonable effort to secure insurance benefits, available proceeds are insufficient as defined in paragraph (d) of this section, and the insured has agreed to repay FEMA from whatever insurance proceeds are later received, pursuant to paragraph (d)(2) of this section.

(2) *Conditions of ineligibility.* Temporary housing assistance shall not be provided:

(i) To an applicant who is displaced from other than his/her primary residence; or

(ii) To an applicant who is displaced solely as a consequence of a redevelopment program undertaken by a community; or

(iii) When the residence in question is habitable, i.e., only minor damage exists and it can reasonably be expected to be repaired by the applicant/owner or the landlord; or

(iv) When the applicant owns a secondary or vacation residence, or unoccupied rental property which meets his/her temporary housing needs; or

(v) To an applicant who has adequate rent-free housing accommodations; or

(vi) To an applicant who has adequate insurance coverage and there is no indication that benefits will be delayed; or

(vii) To an applicant who has adequate insurance but has made no effort to obtain the benefits; or

(viii) When a late application is not approved for processing by the Regional Director as authorized in paragraph (e)(1) of this section, or

(ix) To an applicant who evacuated his/her residence in response to official warnings solely as a precautionary measure, and who is able to return to the residence immediately after the incident, (i.e., the applicant is not otherwise eligible for temporary housing assistance).

(g) *Forms of temporary housing assistance*—(1) *Minimal repairs.* Minimal repairs may be authorized to quickly repair or restore to a habitable condition that portion of or areas affecting the essential living area of, or private access to, an owner-occupied primary residence which was damaged as a result of the disaster. Such assistance shall not be used for major reconstruction or rehabilitation. Installation of utilities or conveniences not available in the residence prior to the disaster shall not be provided under minimal repairs. However, repairs which are authorized shall conform to applicable local and/or State building codes; upgrading of existing damaged utilities may be authorized when required by these codes.

(i) *Options for minimal repairs.* Eligible applicants approved for minimal repairs may be assisted through one or a combination of the following methods:

(A) *Cash payment.* Payment shall be limited to the reasonable costs for the repairs and replacements in the locality, as determined by the Regional Director.

(B) Provision of materials and replacement items.

(C) Government awarded repair contracts when authorized by the Associate Director.

(ii) *Feasibility.* Minimal repairs may be provided to those eligible applicants:

(A) Who are owner-occupants of the residence to be made habitable;

(B) Whose residence can be made habitable by repairs to the essential living area within 30 days following the feasibility determination. The Regional Director may extend this period for extenuating circumstances by determining that this type of assistance is still more cost effective, timely and otherwise suitable than other forms for temporary housing; and

(C) Whose residence can be made habitable by the performance of minimal repairs to the essential living area, the cost of which do not exceed the dollar limitations established by the Associate Director. The Regional Director may, on a case-by-case basis, waive the dollar limitations when minimal repairs are more cost effective and appropriate than other forms of housing assistance or when extenuating circumstances warrant.

(iii) *Scope of work.* The type of repair or replacement authorized may vary depending upon the nature of the disaster. Items will be repaired where feasible or replaced only when necessary to insure the safety, security, or health of the occupant. Replacement items shall be of minimum quality, size, and capacity taking into consideration the needs of the applicant(s). Minimal repairs shall be disaster related and shall be limited to:

(A) Repairs to the plumbing system, including repairs to or replacement of fixtures, providing service to the kitchen and one bathroom;

(B) Repairs to the electrical system providing service to essential living areas, including repairs to or replacement of essential fixtures;

(C) Repairs to the heating unit, including repairs to duct work, vents, and integral fuel and electrical systems. If repair or replacement through other forms of assistance cannot be accomplished before the start of the season requiring heat, minimal repairs may be authorized. Replacement of a heating unit may be authorized by the Regional Director when an inspection shows that the unit has been damaged beyond repair, or when the availability of necessary parts or components makes repair impossible.

(D) Repairs to or replacement of essential components of the fuel system to provide for cooking, and to provide for heating when assistance through other programs cannot be accomplished before the start of the season requiring heat;

(E) Pumping and cleaning of the septic system, repairs to or replacement of the tank, drainfield, or repairs to sewer lines;

(F) Flushing and/or purifying the water well, and repairs to or replacement of the pump, controls, tank, and pipes;

(G) Repairs to or replacement of exterior doors, repair of windows and/or creens needed for health purposes;

(H) Repairs to the stove and refrigerator, when feasible in lieu of provision of these items under paragraph (j) of this section;

(I) Minimal repairs to the roof, when the damages affect the essential living area;

(J) Minimal repairs to interior floors, when severe buckling or deterioration creates a serious safety hazard;

(K) Blocking, leveling, and anchoring of a mobile home;

(L) Reconnecting and/or resetting mobile home sewer, water, electrical and fuel lines, and tanks;

(M) Towing necessary to remove a mobile home from its original site, only when necessary to accomplish other authorized minimal repairs;

(N) Emergency repairs to private access routes, limited to those repairs that meet the minimum safety standards are using the most economical materials available. Such repairs are provided on a one-time basis when no alternative access facilities are immediately available;

(O) Minimal repairs to the foundation piers, walls or footings when the damages affect the structural integrity of the essential living area;

(P) Elimination of other health and safety hazards or performance of essential repairs which are authorized by the Regional Director as not available through emergency services provided by voluntary or community agencies, and cannot reasonably be expected to be completed on a timely basis by the applicant without FERMA assistance.

(iv) *Requirements of the Flood Disaster Protection Act.* FEMA has determined that flood insurance purchase requirements need not be imposed as a condition of receiving minimal repairs. Minimal repairs recipients will normally receive assistance for further repairs from other programs which will impose the purchase and maintenance requirements. However, except for items which are not insurable under the National Flood Insurance Program (e.g., access, sewer and septic systems) minimal repairs may not be provided in zones A or V of a suspended or sanctioned community.

(2) *Existing resources.* These may include locally available Government-owned or assisted properties, private or commercial properties, transient accommodations, and staying with family and friends.

(i) *Government-owned or assisted properties.* Payment for the use of such properties shall be in accordance with existing memoranda of understanding between FEMA and the providing agency.

(ii) *Private and commercial properties.* Rental for private or commercial properties may be paid in accordance with the fair market rent guidelines for the type and size of residence required. At each disaster site, fair market rent guidelines for each size residence shall be established by averaging the cost of available residence per number of bedrooms for each locality where temporary housing will be provided. Where privately owned mobile homes are to be used, a separate guideline should be developed if there is a substantial difference in rent between this type of residence and conventional housing. Guidelines for hotels, motels, and other short-term resources shall be developed only when there is a substantial variance in price among the available supply. The purpose of these fair market rent guidelines is to prevent development of an inflated rental market resulting from the disaster and to insure cost effectiveness. These guidelines reflect the desired maximum payment. Use of resources more costly than the guidelines may be authorized for full payment only when other existing resources are not available. When authorized by the Regional Director, the Federal Government may pay for security deposits; however, the owner or occupant shall reimburse the full amount to the Federal Government before or at the time that temporary housing assistance is terminated.

(iii) *Staying with family and friends.* Sharing of accommodations with family or friends is an allowable form of assistance only when an eligible applicant elects it as his/her form of assistance.

(iv) *Transient accommodations.* Immediately following a Presidentially declared major disaster or emergency, disaster victims are expected to sta
with family or friends without FEM
assistance, or to make use of mas
shelters to the fullest extent possibl
for short-term housing. Transient ac
commodations may be provided whe
individual circumstances warrant suc
assistance for only a short period o
time or pending provision of othe
temporary housing resources. Tran
sient accommodations may be provid
ed for up to 30 days unless this perio
is extended by the Regional Director
Authorized expenditures for transien
accommodations shall be restricted t
the rental cost including utilitie
except for those which are separatel
metered. Payment for food, telephone
or other similar services is not author
ized under this section.

(3) *Mobile homes, travel trailers,* an
other manufactured housing unit
Government-owned or privately owne
mobile homes, travel trailers, an
other manufactured housing unit
may be placed on commercial, private
or group sites. The placement mus
comply with applicable State and loca
codes and ordinances as well a
FEMA's floodplain management regu
lations at 44 CFR Part 9, Floodplain
Management and Protection of Wet
lands, and the environmental assess
ment regulations at 44 CFR Part 10
Environmental Considerations.

(i) A commercial site is a site cus
tomarily leased for a fee because it i
fully equipped to accommodate
housing unit. The Associate Director
has determined that leasing commer
cial sites at Federal expense is in the
public interest. When the Regional Di
rector determines that upgrading o
commercial sites or installation of util
ities on such sites will provide more
cost-effective, timely, and suitable
temporary housing than other type
of resources, he/she may authorize
such action at Federal expense.

(ii) A private site is a site provided or
obtained by the applicant at no cost to
the Federal Government. The Associate Director has determined that the
cost of installation or repairs of essential utilities on private sites is authorized at Federal expense when such actions will provide more cost-effective,
timely, and suitable temporary housing than other types of resources.

(iii) A group site is a site which accommodates two or more units and is provided or obtained by a State, local government or other entity completely developed with all essential utilities at no cost to the Federal Government. However, the Associate Director may authorize development of group sites, including installation of essential utilities, at Federal expense, based upon a recommendation from the Regional Director indicating that all other efforts to obtain funding have been exhausted.

(h) *Appropriate form of temporary housing.* The form of temporary housing provided should not exceed eligible applicants' minimum requirements, taking into consideration items such as timely availability, cost effectiveness, permanent housing plans, special needs (handicaps, etc.) of the applicants, and the requirements of FEMA's floodplain management regulations at 44 CFR Part 9. An applicant shall receive one form of temporary housing, except for transient accommodations or when provision of an additional form is in the best interest of the Government. An eligible applicant is expected to accept the first offer of temporary housing; unwarranted refusal shall result in forfeiture of temporary housing assistance. Existing resources shall be utilized to the fullest extent practicable prior to provision of government-owned mobile homes.

(i) *Utility costs.* All utility costs shall be the responsibility of the occupant except where utility services are not metered separately and are therefore a part of the rental charge. Utility use charges and deposits shall always be the occupant's responsibility.

(j) *Supplemental assistance.* Essential furniture may be provided to eligible temporary housing applicants when such assistance is required to occupy the primary or temporary housing residence. However, loss of furniture does not in and of itself constitute eligibility for temporary housing assistance.

(1) Assistance shall be provided in the most practical manner either by cash payment or obtaining the furniture items by purchase, lease, lease with an option to buy or from Federal stock. Items provided shall be of average construction and quality. Luxury items shall not be provided.

(2) Furniture made available to temporary housing applicants shall be disposed of in one of the following ways:

(i) In those instances where furniture has been leased with a purchase option, the occupant may purchase the items from the lessor before his/her temporary housing assistance is terminated; or

(ii) If the furniture has been purchased by the Federal Government it shall be disposed of in accordance with Federal property management procedures at 41 CFR 101–45.5, Abandonment or Destruction of Surplus Property.

(k) *Duration of assistance*—(1) *Commencement.* Temporary housing assistance may be provided as of the date of the incident of the major disaster or emergency as specified in the FEDERAL REGISTER notice. An effective date of assistance shall be established for each applicant.

(2) *Continued assistance.* Predisaster renters normally shall be provided no more than 1 month of assistance unless the Regional Director determines that continued assistance is warranted in accordance with paragraph (k)(3) of this section. All other occupants of temporary housing shall be certified eligible for continued assistance in increments not to exceed 3 months. Recertification of eligibility for continued assistance shall be in accordance with paragraph (k)(3) of this section, taking into consideration the occupant's permanent housing plan. A realistic permanent housing plan shall be established for each occupant requesting additional assistance no later than at the time of the first recertification.

(3) *Criteria for continued assistance.* A temporary housing occupant shall make every effort to obtain and occupy permanent housing at the earliest possible time. A temporary housing occupant will be required to provide receipts and shall be eligible for continued assistance when:

(i) Adequate alternate housing is not available;

(ii) The permanent housing plan has not been realized through no fault of the applicant; or

(iii) The occupant(s) is in compliance with the terms of the lease/rental agreement including:

(A) Prompt payment of utility, rent, and other appropriate charges;

(B) Maintenance of the temporary housing residence and behavior of occupants in a manner normally expected of a tenant of rental housing;

(C) Utilization of the residence as a dwelling for the occupant's household; and

(D) Reimbursement to the Government where all or a portion of the temporary housing assistance represents a duplication of benefits.

(l) *Rental policy.* Provided the occupant is eligible for continued assistance, no rental shall be established for the first twelve months of occupancy in temporary housing including occupancy in transient accommodations. Thereafter, rentals shall be established based on the fair market rent for the accommodations provided. Such rentals shall be adjusted to take into consideration the financial ability of the household. Based on information obtained through recertification, occupants will be notified of the date and the amount of the first rental payment at least 30 days before the expiration of the first 12 months of occupancy.

(m) *Termination of assistance.* Termination of temporary housing assistance shall be initiated with a 15-day written notice after which the occupant shall be liable for such additional charges as are deemed appropriate by the Regional Director including, but not limited to, the fair market rental for the temporary housing residence.

(1) *Grounds for termination.* Temporary housing assistance may be terminated for reasons including, but not limited to the following:

(i) Adequate alternate housing is available to the occupant(s);

(ii) The temporary housing assistance was obtained either through misrepresentation or fraud; or

(iii) Failure to comply with any term of the lease/rental agreement including those defined in paragraph (k)(3)(iii) of this section.

(2) *Termination procedures.* These procedures shall be utilized in all instances except when a State is administering the Temporary Housing Assistance Program. States shall be subject to their own procedures provided they afford the occupant(s) with due process safeguards described in paragraph (m)(2)(v)(B) of this section.

(i) *Notification of occupant.* Written notice shall be given by FEMA to the occupant(s) at least 15 days prior to the proposed termination of assistance. This notice shall specify: The reasons for termination of assistance/occupancy; the date of termination, which shall be not less than 15 days after receipt of the notice; the administrative procedure available to the occupant if he/she wishes to dispute the action; and the occupant's liability after the termination date for additional charges.

(ii) *Filing of appeal.* If the occupant desires to dispute the termination, upon receipt of the written notice specified in paragraph (m)(2)(i) of this section, he/she shall present an appeal in writing to the appropriate office in person or by mail within five business days. The appeal must be signed by the occupant and state the reasons why the assistance or occupancy should not be terminated. If a hearing is desired, the appeal should so state.

(iii) *Response to appeal.* If a hearing pursuant to paragraph (m)(2)(ii) of this section, has not been requested the occupant has waived the right to a hearing. The appropriate program official shall deliver or mail a written response to the occupant within 5 business days after the receipt of the complaint.

(iv) *Request for hearing.* If the occupant requests a hearing pursuant to paragraph (m)(2)(ii) of this section, FEMA shall schedule a hearing date within 10 business days from the receipt of the appeal, at a time and place reasonably covenient to the occupant, who shall be notified promptly thereof in writing. The notice of hearing shall specify the procedure governing the hearing.

(v) *Hearing*—(A) *Hearing Officer.* The hearing shall be conducted by a Hearing Officer, who shall be designated by the Regional Director, and who shall not have been involved with the decision to terminate the occupant's temporary housing assistance, nor be a subordinate of any individual who was so involved.

(B) *Due process.* The occupant shall be afforded a fair hearing and provided the basic safeguards of due process, including cross-examination of the responsible official(s), access to the documents on which FEMA is relying, the right to counsel, the right to present evidence and the right to a written decision.

(C) *Failure to appear.* If a occupant fails to appear at a hearing the Hearing Officer may make a determination that the occupant has waived his/her right to a hearing, or may, for good cause shown, postpone the hearing for no more than 5 business day.

(D) *Proof.* At the hearing, the occupant must first attempt to establish that continued assistance is appropriate; thereafter, FEMA must sustain the burden of proof in justifying that termination of assistance is appropriate. The occupant shall have the right to present evidence and arguments in support of his/her complaint, to controvert evidence relied on by FEMA, and to cross examine all witnesses on whose testimony or information FEMA relies. The hearing shall be conducted by the Hearing Officer and any evidence pertinent to the facts and issues raised may be received without regard to its admissibility under rules of evidence employed in formal judicial proceedings.

(vi) *Decision.* The decision of the Hearing Officer shall be based solely upon applicable Federal and State law, and FEMA regulations and requirements promulgated thereunder. The Hearing Officer shall prepare a written decision setting forth a statement of findings and conclusions together with the reasons therefor, concerning all material issues raised by the complainant within five (5) business days after the hearing. The decision of the Hearing Officer shall be binding on FEMA, which shall take all actions necessary to carry out the decision or refrain from any actions prohibited by the decision.

(A) The decision shall include a notice to the occupant that he/she must vacate the premises within three (3) days of receipt of the written notice or on the termination date stated in the original notice of termination, as required in paragraph (m)(2)(i) of this section, whichever is later. If the occupant does not quit the premises, appropriate action shall be taken and, if suit is brought, the occupant may be required to pay court costs and attorney fees.

(B) If the occupant is required to give a specific number of days notice which exceeds the number of days in the termination notice, the Regional Director may approve the payment of rent for this period of time if requested by the occupant.

(n) *Disposition of temporary housing units*—(1) *Acquisition.* The Associate Director may purchase mobile homes or other manufactured housing units for those who require temporary housing. After such temporary housing is vacated, it shall be returned to one of the FEMA-operated Strategic Storage Centers for refurbishment and storage until needed in a subsequent major disaster or emergency. When returning the unit to a Strategic Storage Center is not feasible or cost effective, the Associate Director may prescribe a different method of disposition in accordance with applicable Federal regulations.

(2) *Sales*—(i) *Eligibility.* When adequate alternate housing is not available, the Regional Director shall make available for sale directly to a temporary housing occupant(s) any mobile home or manufactured housing unit, acquired by purchase, in accordance with the following:

(A) The unit is to be used as a primary residence;

(B) The purchaser has a site that complies with local codes and ordinances as well as FEMA's floodplain management regulations at 44 CFR Part 9 (in particular § 9.13(e)); and

(C) The purchaser has sufficient funds to purchase and, if necessary, relocate the unit.

The Associate Director may approve the sale of a mobile home or manufactured housing unit to a temporary housing occupant when adequate alternate housing is available but only when such sales are clearly in the best interest of the Government.

(ii) *Sales price.* Units shall be sold at prices that are fair and equitable to the purchaser and to the Government, as determined by the Associate Director. The purchaser shall pay the total sales price at the time of sale.

(iii) *Adjustment to the sales price.* (A) Adjustments to the sales price may be provided only when both of the following conditions are met:

(*1*) There is a need to purchase the unit for use as the purchaser's primary residence because other adequate alternate housing is unavailable. Adequate alternate housing must meet the criteria in paragraph (c)(1) of this section, and may consist of:

(*i*) Existing housing;

(*ii*) Additional resources such as disaster-damaged rental accommodations which can reasonably be expected to be repaired and become available in the near future;

(*iii*) New housing construction or housing to be made available through Government subsidy which is included in the immediate recovery plans for the area; and

(*iv*) Residences which can be repaired by the predisaster owner/occupant through funds available from insurance, other disaster assistance programs, or through his/her own resources.

(*2*) In addition to his/her own resources, the purchaser cannot obtain sufficient funds through insurance proceeds, disaster loans, grants, and commercial lending institutions to cover the sales price.

(B) To determine the adjusted sales price, the current available financial resources of the applicant shall be calculated. If the financial resources are equal to or greater than the basic sales price, then no adjustment shall be approved. If the applicant's financial resources are less than the basic sales price, the sales price shall be adjusted to take into consideration the financial resources available but shall include some consideration. Deviations from this rule may be reviewed on a case-by-case basis by the Associate Director.

(C) The Regional Director must approve all adjustments to the sales price of a mobile home.

(iv) *Other conditions of sale.* (A) A unit shall be sold "as is, where is" except for repairs necessary to protect health or safety, which are to be completed prior to sale. There shall be no implied warranties. In addition, the purchaser must be informed that he/she may have to bring the unit up to codes and standards which are applicable at the proposed site.

(B) In accordance with the Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, the sale of a unit for the purpose of meeting the permanent housing need of an individual or family may not be approved where the unit would be placed in a designated special flood hazard area which has been identified by the Director for at least one year as floodprone unless the community in which the unit is to be located after the sale is, at the time of approval, participating in the National Flood Insurance Program. The purchaser must agree to buy and maintain an adequate flood insurance policy for as long as the unit is occupied by the purchaser. An adequate policy for purposes of this paragraph shall mean one which provides coverage for the basic sales price of the unit. The purchaser must provide proof of purchase of the initial flood insurance policy.

(3) *Transfer.* The Associate Director may lend temporary housing units purchased under section 404(a) of the Act directly to States, other Governmental entities, or voluntary organizations. Such transfers may be made only in connection with a Presidential declaration of a major disaster or emergency. Donations may be made only when it is in the best interest of the Government, such as when future re-use by the Federal Government would not be economically feasible. As a condition of such transfers, the Associate Director shall require that the recipient:

(i) Utilize the units for the purpose of providing temporary housing for victims of major disasters or emergencies in accordance with the written agreement; and

(ii) Comply with the current applicable FEMA policies and regulations, including this section; 44 CFR Part 9 (especially §§ 9.13 and 9.14), Floodplain Management and Protection of Wetlands; 44 CFR Part 10, Environmental Assessment; and 44 CFR 205.16, Non-discrimination in Disaster Assistance. The Associate Director may order returned any temporary housing unit made available under this section which is not used in accordance with the terms of transfer.

(o) *Mortgage and rental payments.* Assistance in the form of mortgage or rental payments may be paid or be provided on behalf of applicants who, as a result of a major disaster or emergency, have received written notice of dispossession or eviction from their primary residence by foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease entered into prior to the disaster. Written notice, for the purpose of this paragraph, means a communication in writing by a landlord, mortgage holder, or other party authorized under State law to file such notice. The purpose of such notice is to notify an occupant of impending termination of a lease, foreclosure of a mortgage or lien, or cancellation of any contract of sale, which would result in the occupant's dispossession or eviction. Applications for this type of assistance may be filed up to one year following the date of declaration. This assistance may be provided for a period not to exceed one year or for the duration of the period of financial hardship, as determined by the Regional Director, whichever is less. The location of the residence of an applicant for assistance under this section shall not be a condition of eligibility.

(p) *Reconsiderations.* (1) An applicant declared ineligible for temporary housing assistance, an applicant whose application has been cancelled for cause, an applicant whose application has been refused because of late filing, or an applicant who received a direct housing payment but is not eligible for continued assistance in accordance with paragraph (k)(3) of this section, shall have the right to dispute such a determination within five (5) calendar days following notification of such action. The Regional Director shall reconsider the original decision within 15 calendar days after its receipt. The applicant shall be given a written notice of the disposition of the reconsideration. The decision of the Regional Director is final.

(2) An occupant who has been notified that his/her request to purchase a mobile home or manufactured housing unit or that a request for an adjustment to the sales price has been denied shall have the right to dispute such a determination within five (5) business days after receipt of such notice. The Regional Director shall reconsider the original decision within 15 calendar days after receipt of the complaint. The occupant shall receive written notice of the disposition of the reconsideration. The decision of the Regional Director is final.

(q) *Reports.* The Associate Director, Regional Director, or Federal Coordinating Officer may require from field operations such reports, plans, and evaluations as they deem necessary to carry out their responsibilities under the Act and these regulations.

(r) *Federal responsibility.* The Federal financial and operational responsibility for the Temporary Housing Assistance Program shall not exceed 18 months from the date of the declaration of the major disaster or emergency. This period may be extended in writing by the Associate Director, based on a determination that it is necessary and in the public interest. The Regional Director may authorize continued use on a non-reimbursable basis of Government property, office space, and equipment by a State, other Government entity, or voluntary organization after the 18 month period.

(s) Non-Federal administration of temporary housing assistance. A State may request authority to administer all or part of the Temporary Housing Assistance Program in the Governor's request for a declaration or in a subsequent written request to the Regional Director from the Governor or his/her authorized representative. The State must have an approved plan prior to the incident and an approved operational annex within three (3) days of the declaration in order to administer the program. When administering the program the State must comply with FEMA program regulations and policies.

(1) *State temporary housing assistance plan.* (i) States which have an interest in administering the Temporary Housing Assistance Program shall be required to develop a plan that includes, at a minimum, the items listed below:

(A) Assignment of temporary housing assistance responsibilities to State and/or local officials and agencies;

(B) A description of the program, its functions, goals and objectives of the program, and proposed organization and staffing plan;

(C) Procedures for:

(*1*) Accepting applications at Disaster Assistance Centers and subsequently at a State established disaster housing office;

(*2*) Determining eligibility utilizing FEMA's habitability contract and notifying applicants of the determination;

(*3*) Preventing duplication of benefits between temporary housing assistance and assistance from other means, as well as a recoupment procedure when duplication occurs;

(*4*) Providing the various types of assistance (minimal repairs, existing resources, transient accommodations, and mobile homes);

(*5*) Providing supplemental assistance;

(*6*) Recertifying occupants for continued assistance;

(*7*) Terminating assistance;

(*8*) Contracting for services and/or supplies;

(*9*) Quality control;

(*10*) Maintaining a management information system;

(*11*) Financial management;

(*12*) Public information;

(*13*) Processing appeals; and

(*14*) Arranging for a program review.

(ii) The Governor or his/her designee may request the Regional Director to provide technical assistance in the preparation of an administrative plan.

(iii) The Governor or his/her designee shall submit the plan to the Regional Director for approval. Plans shall be revised, as necessary, and shall be reviewed at least annually by the Regional Director.

(2) *Operational annex.* Prior to the State administering the program, the State must submit an operational annex which tailors the approved State plan to the particular disaster or emergency. The annex must be reviewed and approved by the Regional Director within three (3) days of the declaration or the State shall not be permitted to administer the program. The operational annex shall include but not be limited to:

(i) Organization and staffing specific to the manager disaster or emergency;

(ii) Pertinent goals and management objectives;

(iii) A proposed budget; and

(iv) A narrative which describes methods for orderly tracking and processing of applications; assuring timely delivery of assistance; identification of potential problem areas; and any deviations from the approved plan.

The Regional Director may require additional annexes as necessary for subsequent phases of the operation.

(3) *Evaluation of capability.* State and local government assumption of the temporary housing assistance program for a particular disaster shall be approved by the Regional Director based on an evaluation of the capabilities and commitment of the entity. At a minimum, the evaluation shall include a review of the following:

(i) The State temporary housing assistance plan which has been approved by the Regional Director prior to the incident, and the specific operational annex which has been approved in accordance with paragraph (s)(2) of this section.

(ii) Past performance in administration of temporary housing assistance or other similar operations;

(iii) Management and staff capabilities; and

(iv) Demonstrated understanding of the task to be performed.

(4) *Grant application.* Approval of funding shall be obtained through submission of a project application by the State or local government through the Governor's Authorized Representative. (Approved by the Office of Management and Budget under OMB Control Number 3067-0043.) The State shall maintain adequate documentation to enable analysis of the program in accordance with FEMA Regulations 44 CFR 205.115. Final reimbursement to the State, or final debt collection,

shall be based on an examination of the voucher filed by the State.

(5) *Authorized costs.* All expenditures associated with administering the program are authorized if in compliance with this section and OMB Circular A-87 Revised, Cost Principles for State and Local Governments (46 FR 9548). Specifically, the following expenses are authorized when applicable:

(i) Administrative expenses.

(A) Regular salaries;

(B) Overtime;

(C) Travel;

(D) Communications;

(E) Space rental;

(F) Equipment rental;

(G) Furniture rental;

(H) Supplies;

(I) Printing and reproduction;

(J) Liability insurance premiums; and

(K) Program reviews and audits.

(ii) Program costs.

(A) Minimal repairs;

(B) Costs associated with rental payments reimbursements for temporary housing including transient accommodations and commercial site rental;

(C) Mobile home installation and maintenance;

(D) Mobile home private site development;

(E) Cost of supplemental assistance;

(F) Mortgage and rental payments; and

(G) Other necessary costs, when approved by the Associate Director.

All contracts require the review and approval of the Regional Director prior to award, in order to be considered as an authorized expenditure.

(6) *Federal monitoring and oversight.* The Regional Director shall monitor State-administered activities since he/she remains responsible for the overall delivery of temporary housing assistance. In addition, policy guidance and interpretations to meet specific needs of a disaster shall be provided through the oversight function.

(7) *Technical assistance.* The Regional Director shall provide technical assistance as necessary to support State-administered operations through training, procedural issuances, and by providing experienced personnel to assist the State and local staff.

(8) *Operational resources.* The Regional Director shall make available for use in State or locally administered operations Federal stand-by contracts, memoranda of understanding with Government and voluntary agencies, and Federal property, such as government-owned mobile homes and travel trailers.

(9) *Program Reviews and Audits.* The State shall conduct a program review of each operation. All operations are subject to Federal audit.

[51 FR 13504, Apr. 21, 1986]

§ 205.53 Disaster unemployment assistance.

The Secretary of Labor, consistent with the delegation of authority to him by the Secretary of the United States Department of Housing and Urban Development dated August 13, 1974 (39 FR 33020), will (a) provide assistance to individuals unemployed as a result of a major disaster, and (b) provide reemployment assistance services under section 407 of the Act and under other laws administered by the Department of Labor to individuals who are unemployed as a result of a major disaster and (c) issue such rules and regulations as may be necessary and appropriate. Such regulations will be issued in 20 CFR Chapter V, Part 625 (34 FR 19656, December 13, 1969), as amended.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979; 44 FR 62517, Oct. 31, 1979. Further redesignated at 47 FR 55757, Dec. 13, 1982; 48 FR 51057, Nov. 4, 1983]

§ 205.54 Individual and Family Grant (IFG) programs.

(a) *General.* The Governor may request that a Federal grant be made to a State for the purpose of such State making grants to individuals or families who, as a result of a major disaster, are unable to meet disaster-related necessary expenses or serious needs. The total Federal grant under this section will be equal to 75 percent of the actual cost of meeting necessary expenses or serious needs of individuals and families, plus State administrative expenses not to exceed 3 percent of the Federal grant (see computation of State administrative expenses in paragraph (g)(6) of this section). The total Federal grant is made only on condition that the remaining 25 percent of the actual cost of meeting individuals' or families' necessary expenses or serious needs is paid from funds made available by the State. With respect to any one major disaster, an individual or family may not receive a grant or grants under this section totaling more than $5,000, including both the Federal and State shares. The Governor or his/her designee is responsible for the administration of the grant program. The provisions of this regulation are in accordance with OMB Circular A-102, Uniform Requirements for Grants to State and Local Governments, to which the reader is referred for more information (45 FR 55086, August 18, 1980).

(b) *Purpose.* The grant program is intended to provide funds to individuals or families to permit them to meet those disaster-related necessary expenses or serious needs for which assistance from other means is either unavailable or inadequate. Meeting those expenses and needs as expeditiously as possible will require States to make an early commitment of personnel and resources. States may make grants for emergency needs in instances where there is an unreasonable delay in receiving assistance from other means, with a commitment from the applicant that when assistance is received from other means the State must be reimbursed. The grant program is not intended to indemnify disaster losses or to permit purchase of items or services which may generally be characterized as nonessential, luxury, or decorative. Assistance under this program is not to be counted as income or a resource in the determination of eligibility for welfare or other income-tested programs supported by the Federal government, in that IFG assistance is intended to address only disaster related needs.

(c) *Definitions used in this section.*

(1) "Necessary expense" means the cost of a serious need.

(2) "Serious need" means the requirement for an item or service essential to an individual or family to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

(3) "Family" means a social unit living together and composed of:

(i) Legally married individuals or those couples living together as if they were married and their dependents; or

(ii) A single person and his/her dependents; or

(iii) Persons who jointly own the residence and their dependents.

(4) "Individual" means anyone who is not a member of a family, as described above.

(5) "Dependent" means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together where the children live in the affected residence with the parent who does not actually claim them on the tax return.

(6) "Expendable items" means consumables, as follows: linens, clothes, and basic kitchenware (pots, pans, utensils, dinnerware, flatware, small kitchen appliances).

(7) "Assistance from other means" means assistance including monetary or in-kind contributions, from other governmental programs, insurance, voluntary or charitable organizations, or from any sources other than those of the individual or family. It does not include expendable items.

(8) "Owner-occupied" means that the residence is occupied by: The legal owner; a person who does not hold formal title to the residence but is responsible for payment of taxes, maintenance of the residence, and pays no rent; or a person who has lifetime occupancy rights in the residence with formal title vested in another. In States where documentation proving ownership is not recorded or does not exist, the State is required to include in its administrative plan a State Attorney General approved set of conditions describing adequate proof of ownership.

(9) "Flowage easement" means an area where the landowner has given the right to overflow, flood, or submerge the land to the government or other entity for a public purpose.

(d) *National eligibility criteria.* In administering the IFG program, a State shall determine the eligibility of an individual or family in accordance with the following criteria:

(1) *General.* (i) To qualify for a grant under this section, an individual or family representative must:

(A) Make application to all applicable available governmental disaster assistance programs for assistance to meet a necessary expense or serious need, and be determined not qualified for such assistance, or demonstrate that the assistance received does not satisfy the total necessary expense or serious need;

(B) Not have previously received or refused assistance from other means for the specific necessary expense or serious need, or portion thereof, for which application is made; and

(C) Certify to refund to the State that part of the grant for which assistance from other means is received, or which is not spent as identified in the grant award document.

(ii) Individuals or families who incur a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their alienage, their residency in the major disaster area, or their residency within the State in which the major disaster has been declared except that for assistance in the "housing" category, ownership and residency in the declared disaster area are required (see paragraph (d)(2)(i)).

(iii) The Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, imposes certain restrictions on approval of Federal financial assistance for acquisition and construction purposes. Subpart K of Part 205 implements Pub. L. 93–234 for FEMA assistance generally. This paragraph refines those requirements for the IFG program. To the extent that this paragraph is inconsistent with Subpart K, this paragraph applies.

(A) For the purposes of this paragraph, "financial assistance for acquisition or construction purposes" means a grant to an individual or family to repair, replace, or rebuild the insurable portions of a home, and/or to purchase or repair insurable contents. For a discussion of what elements of a home and contents are insurable, see 44 CFR Part 61, Insurance Coverage and Rates.

(B) A State may not make a grant for acquisition or construction purposes where the structure to which the grant assistance relates is located in a designated special flood hazard area which has been identified by the Director for at least one year as flood-prone, unless the community in which the structure is located is participating in the National Flood Insurance Program (NFIP). However, if a community qualifies for and enters the NFIP during the six-month period described in 44 CFR 205.253(a)(3)(i), the Governor's Authorized Representative (GAR) may request a time extension (see subparagraph (j)(1)(ii) of this section) from the Regional Director for the purpose of accepting and processing grant applications in that community. The Regional Director or Associate Director, as appropriate, may approve the State's request if those applicable governmental disaster assistance programs which were available during the original application period are available to the grant applicants during the extended application period.

(C)(*1*) The State may not make a grant for acquisition or construction purposes in a designated flood hazard area in which the sale of flood insurance is available under the NFIP unless the individual or family agrees to purchase adequate flood insurance and to maintain such insurance for 3 years, or as long as they live in the residence to which the grant assistance relates, whichever is less. Any previous grant recipient who may have been required to maintain a policy for a longer period of time (under previous regulations) but who kept it for at least three years, is deemed to have satisfied this requirement. This provision need be applied only during the 3-year period prior to a new disaster declaration. Adequate flood insurance, for IFG purposes, means a policy which covers $5,000 building and $2,000 contents (homeowners) or $5,000 contents (renters). If the grant recipient fails to obtain the required flood insurance, he/she must return to the State the amount of the grant received for acquisition and construction of insurable real and personal property, and the flood insurance premium. If a grant recipient cancels a required policy within the 3-year period, he/she is ineligible for subsequent IFG assistance for insurable real and personal property for the remainder of the 3-year period, up to the amount which should have been covered by flood insurance. The cost of the first year's policy is a necessary expense for those required under this section to buy flood insurance.

(*2*) After a determination that flood insurance is required and after disbursement of a grant, States shall require the grant recipient to provide proof of purchase of the required flood insurance.

(D) A State may not make a grant for acquisition or construction purposes where an applicant who is required to apply to the SBA or Farmers Home Administration in accordance with paragraph (d)(1)(i)(A) of this section is denied loan assistance because of failure to have obtained and/or maintained a flood insurance policy required as a condition of previous loan assistance.

(E) A State may not make a grant for acquisition or construction purposes when the applicant is deemed to have assumed the risk knowingly, that is, when property is located within a flowage easement, or in an area between a river and a levee (where the family built the home after the levee was built, or was compensated for future flood damage at the time the levee was built), or when a residence is located on land leased to an individual where that lease holds the government harmless from the risk of damage. This restriction does not apply if an applicant is going to use the funds to move out of the risk area.

(iv) In order to comply with the President's Executive Orders on Floodplain Management (E.O. 11988) and Protection of Wetlands (E.O. 11990), the State must implement the IFG program in accordance with FEMA regulations 44 CFR Part 9. That part specifies which IFG program actions require a floodplain management decision-making process before a grant may be made, and also specifies the steps to follow in the decision-making process. Should the State determine that an individual or family is otherwise eligible for grant assistance, the State shall accomplish the necessary steps in accordance with that section, and request the Regional Director to make a final floodplain management determination.

(2) *Eligible categories.* Assistance under this section shall be made available to meet necessary expenses or serious needs by providing essential items or services in the following categories:

(i) Housing. With respect to primary residences (including mobile homes) which are owner-occupied at the time of the disaster, grants may be authorized to:

(A) Repair, replace, or rebuild;

(B) Provide access. When an access serves more than one individual or family, an owner-occupant whose primary residence is served by the access may be eligible for a proportionate share of the cost of jointly repairing or providing such access. The owner-occupant may combine his/her grant funds with funds made available by the other individuals or families if a joint use agreement is executed (with no cost or charges involved) or if joint ownership of the access is agreed to;

(C) Clean or make sanitary;

(D) Remove debris from such residences. Debris removal is limited to the minimum required to remove health or safety hazards from, or protect against additional damage to the residence;

(E) Provide or take minimum protective measures required to protect such residences against the immediate threat of damage, which means that the disaster damage is causing a potential safety hazard and, if not repaired, will cause actual safety hazards from common weather or environmental events (example: additional rain, flooding, erosion, wind); and

(F) Minimization measures required by owner-occupants to comply with the provisions of 44 CFR Part 9 (Floodplain Management and Protection of Wetlands), to enable them to receive assistance from other means and/or to enable them to comply with a community's floodplain management regulations.

(ii) Personal property. Proof of ownership of personal property is not required. This category includes:

(A) Clothing;

(B) Household items, furnishings, or appliances. If a pre-disaster renter receives a grant for household items, furnishings, or appliances and these items are an integral part of mobile home or other furnished unit, the pre-disaster renter may apply the funds awarded for these specific items toward the purchase of the furnished unit, and toward mobile home site development, towing, set-up, connecting and/or reconnecting;

(C) Tools, specialized or protective clothing, and equipment which are required by an employer as a condition of employment;

(D) Repairing, cleaning or sanitizing any eligible personal property item; and

(E) Moving and storing to prevent or reduce damage.

(iii) Transportation. Grants may be authorized to repair, replace, or provide privately owned vehicles, or to provide public transportation.

(iv) Medical or dental expenses.

(v) Funeral expenses. Grants may include funeral and burial (and/or cremation) and related expenses.

(vi) Cost of the first year's flood insurance premium to meet the requirements of this section.

(vii) Cost for estimates required for eligibility determinations under the IFG program. Housing and personal property estimates will be provided by the government. However, an applicant may appeal to the State if he/she feels the government estimate is inaccurate. The cost of an applicant-obtained estimate to support the appeal is not an eligible cost.

(viii) Other. A State may determine that other necessary expenses and serious needs are eligible for grant assistance. If such a determination is made, the State must summarize the facts of the case and thoroughly document its finding of eligibility. Should the State require technical assistance in making a determination of eligibility, it may provide a factual summary to the Regional Director and request guidance. The Associate Director also may determine that other necessary expenses and serious needs are eligible for grant assistance. Following such a determination, the Associate Director shall advise the State, through the Regional Director, and provide the necessary program guidance.

(3) *Ineligible categories.* Assistance under this section shall not be made available for any item or service in the following categories:

(i) Business losses, including farm businesses and self-employment;

(ii) Improvements or additions to real or personal property, except those required to comply with paragraph (d)(2)(i)(F) of this section;

(iii) Landscaping;

(iv) Real or personal property used exclusively for recreation; and

(v) Financial obligations incurred prior to the disaster.

(4) *Verification.* The State will be provided most verification data on IFG applicants who were not required to first apply to the SBA. The FEMA Regional Director shall be responsible for performing most of the required verifications in the categories of housing (to include documentation of home ownership and primary residency); personal property; and transportation (to include notation of the plate or title number of the vehicle; the State may wish to follow up on this). Certain verifications may still be required to be performed by the State, such as on late applications or reverifications, when FEMA or its contractors are no longer available, and on medical/dental, funeral and "other" categories. Eligibility determination functions shall be performed by the State. The SBA will provide copies of verifications performed by SBA staff on housing and personal property (including vehicles) for those applicants who were first required to apply to SBA. This will enable the State to make an eligibility determination on those applicants. When an applicant disagrees with the grant award, he/she may appeal to the State. The cost of any estimate provided by the applicant in support of his/her appeal is not eligible under the program.

(e) *State administrative plan.* (1) The State shall develop a plan for the administration of the IFG program that includes, as a minimum, the items listed below:

(i) Assignment of grant program responsibilities to State officials or agencies.

(ii) Procedures for:

(A) Notifying potential grant applicants of the availability of the program, to include the publication of application deadlines, pertinent program descriptions, and further program information on the requirements which must be met by the applicant in order to receive assistance;

(B) Participating with FEMA in the registration and acceptance of applications, including late applications up to the prescribed time limitations;

(C) Reviewing verification data provided by FEMA and performing verifications for medical, dental, funeral and "other" expenses, and also for all grant categories in the instance of late applications and appeals. FEMA will perform any necessary reverifications while its contract personnel are in the disaster area, and the State will perform any others;

(D) Determining applicant eligibility and grant amounts, and notifying applicants of the State's decision;

(E) Determining the requirement for flood insurance;

(F) Preventing duplication of benefits between grant assistance and assistance from other means;

(G) At the applicant's request, and at the State's option, reconsidering the State's determinations;

(H) Processing applicant appeals, recognizing that the State has final authority. Such procedures must provide for:

(*1*) The receipt of oral or written evidence from the appellate or representative;

(*2*) A determination on the record; and

(*3*) A decision by an impartial person or board;

(I) Disbursing grants in a timely manner;

(J) Verifying by random sample that grant funds are meeting applicants' needs, are not duplicating assistance from other means, and are meeting floodplain management and flood insurance requirements. Guidance on the sample size will be provided by the Regional Director;

(K) Recovering grant funds obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, not expended or committed as of the date the State requests Federal reimbursement, or authorized for acquisition or construction purposes where proof of purchase of flood insurance is not provided to the State. Except for those mentioned in the previous sentence, grants made properly by the State on the basis of Federally sponsored verification information are not subject to recovery by the State, i.e., FEMA will not hold the State responsible for repaying to FEMA the Federal share of those grants. The State is responsible for its 25 percent share of those grants. As an attachment to its voucher, the State must identify each case where recovery actions have been taken or are to be taken, and the steps taken or to be taken to accomplish recovery;

(L) Conducting any State audits that might be performed in compliance with the Single Audit Act of 1984;

(M) Reporting to the Regional Director, and to the Federal Coordinating Officer as required; and

(N) Reviewing and updating the plan each January.

(iii) National eligibility criteria as defined in paragraph (d) of this section.

(iv) Provisions for compliance with 44 CFR Part 11, Claims, and the State's own debt collection procedures.

(v) Pertinent time limitations for accepting applications, grant award activities, and administrative activities, to comply with Federal time limitations.

(vi) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program; for repaying the advanced State share as of the date agreed upon by the Governor and the Regional Director; and for immediately returning, upon discovery, all Federal funds that are excess to program needs.

(vii) Provisions for safeguarding the privacy of applicants and the confidentiality of information, except that the information may be provided to agencies or organizations who require it to make eligibility decisions for assistance programs, or to prevent duplication of benefits, to State agencies responsible for audit or program review, and to FEMA or the General Accounting Office for the purpose of making audits or conducting program reviews.

(viii) A section identifying the management and staffing functions in the IFG program, the sources of staff to fill these functions, and the management and oversight responsibilities of:

(A) The GAR;

(B) The department head responsible for the IFG program;

(C) The Grant Coordinating Officer, i.e., the State official assigned management responsibility for the IFG program; and

(D) The IFG program manager, where management responsibilities are assigned to such a person on a day-to-day basis.

(2) The Governor or his/her designee may request the Regional Director to provide technical assistance in the preparation of an administrative plan to implement this program.

(3) The Governor shall submit a revised State administrative plan each January to the Regional Director. The Regional Director shall review and approve the plan annually. In each disaster for which assistance under this section is requested, the Regional Director shall request the State to prepare any amendments required to meet current policy guidance. The Regional Director must then work with the State until the plan and amendment(s) are approved.

(4) The State shall make its approved administrative plan part of the State emergency plan, as described in § 205.4 of these regulations.

(f) *State initiation of the IFG program.* To make assistance under this section available to disaster victims, the Governor must, either in the request to the President for a major disaster declaration or by separate letter to the Regional Director, express his/her intention to implement the program. This expression of intent must include an estimate of the size and cost of the program. In addition, this expression of intent represents the Governor's agreement to the following:

(1) That the program is needed to satisfy necessary expenses and serious needs of disaster victims which cannot otherwise be met;

(2) That the State will pay its 25 percent share of all grants to individuals and families;

(3) That the State will return immediately upon discovery advanced Federal funds that exceed actual requirements;

(4) To implement an administrative plan as identified in paragraph (e) of this section;

(5) To implement the grant program throughout the area designated as eligible for assistance by the Associate Director; and

(6) To maintain close coordination with and provide reports to the Regional Director.

(g) *Funding.* (1) The Regional Director may obligate funds incrementally for the Federal share of the IFG program based upon the determination that:

(i) The Governor has indicated the intention to implement the program, in accordance with subparagraph (f) of this section;

(ii) The State's administrative plan meets the requirements of this section and current policy guidance; and

(iii) There is no excess advance of the Federal share due FEMA from a prior IFG program. The State may eliminate any such debt by paying it immediately, or by accepting an offset of the owed funds against other funds payable by FEMA to the State. When the excess Federal share has been repaid, the Regional Director may then obligate funds for the Federal share for the current disaster.

(2) The Regional Director may increase the State's letter of credit in increments of funds to meet the Federal share of program needs if the above conditions are met. The State may withdraw funds for the Federal share in the amounts made available to it by the Regional Director.

(3) The Regional Director may obligate funds incrementally for the State share of the IFG program based upon the Governor's request (for subsequent obligations, the GAR may re-

quest). Along with an estimate of the total amount needed to meet the State's 25 percent share, the initial request for authority to borrow the State share shall include:

(i) A certification that the State is unable immediately to pay its 25 percent share, and the reasons for this inability;

(ii) A statement of the specific actions the State will take to enable it to pay its 25 percent share; and

(iii) A certification that the State will repay the advance, and the date for this repayment, which will be agreed upon in the FEMA/State agreement. A Bill for Collection (BFC) will be issued on the repayment date if the advance is not repaid as agreed. Prior to the repayment date, the State may request, and the Regional Director may approve, a revision to the FEMA/State agreement to extend the State share due date if good cause exists.

(4) The Regional Director may increase the State's letter of credit in increments of funds to meet the State share of program needs if the above conditions are met, and if the State is not delinquent in repaying State share debts from previous IFG programs. The State may eliminate this debt by accepting an offset of the owed funds against other funds payable to the State by FEMA.

(5) The Regional Director must recover any advance of the State share not repaid by the date established in accordance with subparagraph (g)(3)(iii), and any excess advance of the Federal share not repaid immediately upon discovery of the excess by using debt collection procedures at 44 CFR Part 11. Debt collection procedures must also be used when recovering funds due FEMA upon examination of the State's final voucher.

(6) Payable costs include 75 percent of the costs of meeting necessary expenses or serious needs, and expenses incurred in administering the grant program. The amount payable for administrative purposes is computed by dividing the payable Federal cost of meeting necessary expenses and serious needs by .97, and subtracting the payable Federal costs of meeting such expenses or needs from the quotient. Costs for grants that are improperly or inadequately documented are not payable. Costs for grants that are not in conformance with national eligibility criteria or the approved State administrative plan are not payable. Costs for grants that have not been expended or committed by the grant recipient at the time the State submits its final voucher may be payable only if the Regional Director determines, based on justification provided by the State, that adequate steps are being taken to correct the deficiency. Costs for grants made on the basis of fraudulent information, that were misapplied by the grant recipient, that duplicate assistance from other means, or that were authorized for acquisition or construction where proof of purchase of flood insurance was not provided by the grant recipient, may be payable only if the State has taken the steps required by its administrative plan to recover the funds. If the State has been unable to recover the funds, the Regional Director shall consider the costs payable, but shall institute debt collection procedures against the individual when fraud or misapplication are involved. If the State did not take the steps required by its administrative plan, the costs are not payable, and shall be suspended. The State must identify each case where deficiencies exist but for which it is requesting payment, and the steps it has taken to remedy the deficiency. This section is consistent with OMB Circular A-87, Cost Principles for State and Local Governments, to which the reader is referred for more information (46 FR 9548, January 28, 1981).

(h) *Voucher analysis.* Final reimbursement to the State, or final debt collection, shall be based on examination of a voucher filed by the State within the time limitations stated in subparagraph (j). The voucher is either the final SF-269, Financial Status Report (used when the funding method is letter of credit), or FEMA Form 90-27, Request for Advance or Reimbursement (used when the Treasury check or wire transfer is the funding method).

(1) If no significant deficiencies were found during the mid program review, a second review and narrative summa-

ry shall be prepared, along with examination of the fiscal portion of the voucher. The review shall include the following determinations:

(i) That the State specifically identified in its accounts all Federal and State funds committed to the IFG program;

(ii) That the State's share was provided from funds made available by the State;

(iii) That the State has repaid, or is taking the necessary steps to enable it to repay, the State share and any excess advances of the Federal share which exceed program needs; and

(iv) That the claimed administrative costs were correctly calculated.

(2) If significant deficiencies (25 percent of case files examined) existed during the mid program review, a second review shall be prepared, along with an additional case file sample and a document containing the determinations in subparagraph (h)(1) above and the following additional determinations that the grant payments:

(i) Meet eligibility criteria stated in the approved State administrative plan;

(ii) Were disaster related;

(iii) Are based on adequate FEMA verification documentation, and other documentation (flood insurance requirement, information on assistance from other means, grant award document, etc.);

(iv) Do not exceed $5,000;

(v) Were spent by the named disaster victim and spent as indicated in the grant award document;

(vi) Do not represent cases of fraud, misapplication or duplication of benefits, where the State has failed to take measures appropriate to its administrative plan; and

(vii) If based on an appeal, contain adequate justification for the final determination.

Voucher analysis results in approval of the final voucher in whole or in part, disapproval of the final voucher, request for a Federal audit, or suspension until deficiencies have been corrected by the State.

(i) *Audits.* The State should perform the audits required by the Single Audit Act of 1984. Refer to 44 CFR Part 14, Administration of Grants; Audits of State and Local Governments, which implements OMB Circular A-128 regarding audits. All programs are subject to Federal audit.

(j) *Time limitations.* (1) In the administration of the IFG program:

(i) The Governor shall indicate his/her intention to implement the IFG program no later than seven days following the day on which the major disaster was declared and in the manner set forth in paragraph (f) of this section;

(ii) Applications shall be accepted from individuals or families for a period of 60 days following the declaration, and for no longer than 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely way. *Exception:* If applicants exercising their responsibility to first apply to the Small Business Administration do so after SBA's deadline, and SBA accepts their case for processing because of "substantial causes essentially beyond the control of the applicant," and provides a formal decline or insufficient loan based on lack of repayment ability, unsatisfactory credit, or unsatisfactory experience with prior loans (i.e., the reasons a loan denial client would normally be eligible for IFG assistance), then such an application referred to the State by the SBA is considered as meeting the IFG filing deadline. The State may then apply its own criteria in determining whether to process the case for grant assistance. The State automatically has an extension of time to complete the processing, eligibility, and disbursement functions. However, the State must still complete all administrative activity within the 270-day period described in this section.

(iii) The State shall complete all grant award activity, including eligibility determinations, disbursements, and disposition of appeals, within 180 days following the declaration date. The Regional Director shall suspend all grant awards disbursed after the specified completion date; and

(iv) The State shall complete all administrative activities and submit final reports and vouchers to the Regional Director within 90 days of the completion of all grant award activity.

(2) The GAR may submit a request with appropriate justification for the extension of any time limitation. The Regional Director may approve the request for a period not to exceed 90 days. The Associate Director may approve any request for a further extension of the time limitations.

(k) *Appeals*—(1) *Bills for Collection (BFC's).* The State may appeal the issuance of a BFC by the Regional Director. Such an appeal shall be made in writing within 30 days of the issuance of the bill. The appeal must include information justifying why the bill is incorrect. The Regional Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision. Interest on BFC's starts accruing on the date of issuance of the BFC, but is not charged if the State pays within 30 days of issuance. If the State is successful in its appeal, interest will not be charged; if unsuccessful, interest is due and payable, as above.

(2) *Other appeals.* The State may appeal any other decision of the Regional Director. Such appeals shall be made in writing within 30 days of the Regional Director's decision. The appeal must include information justifying a reversal of the decision. The Regional Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(3) *Appeals to the Associate Director.* The State may further appeal the Regional Director's decisions to the Associate Director. This appeal shall be made in writing within 30 days of the Regional Director's decision. The appeal must include information justifying a reversal of the decision. The Associate Director shall review the material submitted and notify the State, in writing, within 15 days of receipt of the appeal, of his/her decision.

(l) *Exemption from Garnishment.* All proceeds received or receivable under the IFG program shall be exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. No rights under this provision are assignable or transferable. The above exemptions will not apply to the requirement imposed by paragraph (e)(1)(ii)(K) of this section.

(m) *Debt Collection.* In cases involving fraud or misapplication of IFG funds, the Regional Director shall institute debt collection activities against the individual according to the procedures outlined in 44 CFR Part 11, Claims.

[51 FR 32646, Sept. 15, 1986, as amended at 53 FR 3598, Feb. 8, 1988]

§ 205.56 Food commodities.

(a) The Associate Director will assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or distribution in any area of the United States which suffers a major disaster or emergency.

(b) In carrying out his responsibilities in paragraph (a) of this section, the Associate Director may direct the Secretary of Agriculture to purchase food commodities in accordance with authorities prescribed in section 410(b) of the Act.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979 and 47 FR 55757, Dec. 13, 1982; 48 FR 51057, Nov. 4, 1983]

§ 205.57 Relocation assistance.

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (Pub. L. 91-646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the

President, to meet the occupancy requirements set by such Act.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979 and 47 FR 55757, Dec. 13, 1982; 48 FR 51057, Nov. 4, 1983]

§ 205.58 Disaster legal services.

(a) Legal services, including legal advice, counseling, and representation in non fee-generating cases, except as provided in paragraph (b) of this section, may be provided to low-income individuals who require them as a result of a major disaster. For the purpose of this section, "low-income individuals" means those disaster victims who have insufficient resources to secure adequate legal services, whether the insufficiency existed prior to or results from the major disaster. In cases where questions arise about the eligibility of an individual for legal services, the Regional Director or his/her representative shall make a determination.

(b) Disaster legal services shall be provided free to such individuals. Fee-generating cases shall not be accepted by lawyers operating under these regulations. For purposes of this section, a fee-generating case is one which would not ordinarily be rejected by local lawyers as a result of its lack of potential remunerative value. Where any question arises as to whether a case is fee-generating as defined in this section, the Regional Director or his/her representative, after any necessary consultation with local or State bar associations, shall make the determination. Any fee-generating cases shall be referred by the Regional Director or his/her representative to private lawyers, through existing lawyer referral services, or, where that is impractical or impossible, the Regional Director may provide a list of lawyers from which the disaster victim may choose. Lawyers who have rendered voluntary legal assistance under these regulations are not precluded from taking fee-generating cases referred to them in this manner while in their capacity as private lawyers.

(c) When the Regional Director determines after any necessary consultation with the State Coordinating Officer, that implementation of this section is necessary, provision of disaster legal services may be accomplished by:

(1) Use of volunteer lawyers under the terms of appropriate agreements;

(2) Use of Federal lawyers, provided that these lawyers do not represent an eligible disaster victim before a court or Federal agency in a matter directly involving the United States, and further provided that these lawyers do not act in a way which will violate the standards of conduct of their respective agencies or departments;

(3) Use of private lawyers who may be paid by the Federal Emergency Management Agency when the Regional Director has determined that there is no other means of obtaining adequate legal assistance for qualified disaster victims; or

(4) Any other arrangement the Regional Director deems appropriate.

The Associate Director shall coordinate with appropriate Federal agencies and the appropriate national, state and local bar associations, as necessary, in the implementation of the disaster legal services program.

(d) In the event it is necessary for the Federal Emergency Management Agency to pay lawyers for the provision of legal services under these regulations, the Regional Director, in consultation with State and local bar associations, shall determine the amount of reimbursement due to the lawyers who have provided disaster legal services at the request of the Regional Director. At the Regional Director's discretion, administrative costs of lawyers providing legal services requested by him or her may also be paid.

(e) Provision of disaster legal services is confined to the securing of benefits under the Act and claims arising out of a major disaster.

(f) Any disaster legal services shall be provided in accordance with § 205.13, Non-discrimination in disaster assistance, of these regulations.

[43 FR 19230, May 4, 1978. Redesignated at 44 FR 56172, Sept. 28, 1979; 44 FR 62517, Oct. 31, 1979. Further redesignated at 47 FR 55757, Dec. 13, 1982; 48 FR 51057, Nov. 4, 1983]

§ 205.59 Crisis counseling assistance and training.

(a) *Purpose.* This section establishes the policy, standards, and procedures for implementing section 413 of the Act, Crisis Counseling Assistance and Training. FEMA will look to the Director, National Institute of Mental Health (NIMH), as the delegate of the Secretary of Health and Human Services (HHS).

(b) *Definitions.* (1) "Assistant Associate Director" means the head of the Office of Disaster Assistance Programs, FEMA; the official who approves or disapproves a request for assistance under section 413 of the Act.

(2) "Crisis" means any life situation resulting from a major disaster or its aftermath which so affects the emotional and mental equilibrium of a disaster victim that professional mental health counseling services should be provided to help preclude possible damaging physical or psychological effects.

(3) "Crisis counseling" means the application of individual and group treatment procedures which are designed to ameliorate the mental and emotional crises and their subsequent psychological and behavioral conditions resulting from a major disaster or its aftermath.

(4) "Federal Coordinating Officer (FCO)" means the person appointed by the Associate Director to coordinate Federal assistance in an emergency or a major disaster.

(5) "Grantee" means the State mental health agency or other local or private mental health organization which is designated by the Governor to receive funds under section 413 of the Act.

(6) "Immediate services" means those screening or diagnostic techniques which can be applied to meet mental health needs immediately after a major disaster such as those which may be provided at disaster assistance centers. Funds for immediate services may be provided directly by the Regional Director to the State or local mental health agency, prior to and separate from the regular application process of crisis counseling assistance.

(7) "Major disaster" means any hurricane, tornado, storm, flood, high-water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of State and local governments, and disaster relief organizations alleviating the damage, loss, hardship, or suffering caused thereby.

(8) "Project Officer" means the person assigned by the Secretary, HHS, to monitor a crisis counseling program, provide technical assistance and guidance, and be the contact point within HHS for program matters.

(9) "Regional Director" means the director of a regional office of FEMA, or the Disaster Recovery Manager, as the delegate of the Regional Director.

(10) "Secretary" means the Secretary of HHS or his/her delegate.

(11) "State Coordinating Officer (SCO)" means the person appointed by the Governor to act in cooperation with the FCO.

(c) *Agency policy.* (1) It is agency policy to provide crisis counseling services, when required, to victims of a major disaster for the purpose of relieving mental health problems caused or aggravated by a major disaster or its aftermath. Assistance provided under this section is short-term in nature and is provided at no cost to eligible disaster victims.

(2) The Regional Director and Assistant Associate Director, in fulfilling their responsibilities under this section, shall coordinate with the Secretary.

(3) In meeting the responsibilities under this section, the Secretary or his/her delegate will coordinate with the Assistant Associate Director.

(d) *State initiation of the crisis counseling program.* (1) Assessment. To obtain assistance under this section, the Governor or his/her authorized representative must initiate an assessment of the need for crisis counseling within 10 days of the date of the major disaster declaration. The purpose of the assessment is to provide an estimate of the size and cost of the program needed and to determine if supplemental assistance is required. The factors in the assessment must include those described in paragraphs (d)(3)(ii) (C) and (D) of this section.

(2) *Immediate services.* If, during the course of the assessment, the State determines that immediate mental health services are required because of the severity and magnitude of the disaster, and if State or local resources are insufficient to provide these services, the State may request and the Regional Director, upon determining that Stated resources are insufficient, may provide funds to the State, separate from the application process described in the remainder of this section. The Regional Director shall consult with the Secretary in evaluating the need for immediate services and the State's capability for providing the services. Immediate services are not intended to be a replacement for the regular program. Therefore, funding shall be granted only for that period of time that does not exceed 60 days following the declaration of the disaster, except that if an application for the regular program under paragraph (d)(3) of this section has been submitted, funding for immediate services may continue until a decision has been made on that application.

(3) *Application for regular program.* Assistance under section 413 is provided primarily in the form of a grant to a State, local or private mental health organization designated by the Governor to administer the crisis counseling program. The Governor or his/her authorised representative shall submit an application to the Assistant Associate Director, through the Regional Director, and simultaneously to the Secretary, not later than 60 days following the declaration of the major disaster.

(i) The application represents the Governor's agreement and/or certification:

(A) That the requirements are beyond the State and local governments' capabilities;

(B) That the program, if approved, will be implemented according to a plan approved by the Assistant Associate Director;

(C) To maintain close coordination with and provide reports to the Regional Director, the Assistant Associate Director, and the Secretary; and

(D) To include mental health disaster planning in the State's emergency plan prepared under Title II, Pub. L. 93-288.

(ii) The application must include:

(A) Standard Form 424;

(B) The geographical areas within the designated disaster area for which services will be supplied;

(C) An estimate of the number of disaster victims requiring assistance. This documentation of need should include the extent of physical, psychological, and social problems observed, the types of mental health problems encountered by victims, and a description of how the estimate was made;

(D) A description of the State and local resources and capabilities, and an explanation of why these resources cannot meet the need; and

(E) A plan of services as described in paragraph (d)(4) of this section.

(4) *Plan of services*—(i) *State administered programs.* In accordance with paragraph (d)(3)(ii)(D) of this section, the Governor must submit a plan of services to the Regional Director. The plan of services must include:

(A) The manner in which the program will address the needs of the affected population, including the types of services to be offered, an estimate of the length of time for which mental health services will be required, and the manner in which long-term cases will be handled;

(B) A description of the organizational structure of the program, including designation by the Governor of an individual to serve as administrator of the program. If more than one agency will be delivering services, the plan to coordinate services must also be described;

(C) *Training plans.* If a training program for staff is planned, it must be described, and the number of workers needing such training must be indicated;

(D) Facilities to be utilized, including plans for securing office space if necessary to the project; and

(E) A detailed budget, including identification of the resources the State and local governments will commit to both services and training, proposed funding levels for the different agencies if more than one is involved, and an estimate of the required Federal contribution.

(ii) *Public or private mental health agency programs*. If the Governor determines during the assessment that because of unusual circumstances or serious conditions within the State or local mental health network, the State cannot carry out the crisis counseling program, he/she may identify a public or private mental health agency or organization to carry out the program or request the Regional Director to identify, with the assistance of the Secretary, such an agency or organization. Preference should be given to the extent feasible and practicable to those public and private agencies or organizations which are located in or do business primarily in the major disaster area. In order to obtain the financial assistance requested by the Governor, this agency or organization must submit a plan of services, as in paragraph (d)(4) of this section. The Governor's application is not complete without this plan of services.

(e) *Assignment of responsibilities*.

(1) The Regional Director shall:

(i) In the case of a request for immediate services, acknowledge receipt of the request, verify (with assistance from the Secretary) that State resources are insufficient, approve or disapprove the State's request, and obligate and advance funds for this purpose;

(ii) In the case of a regular program application:

(A) Acknowledge receipt of the request;

(B) Request the Secretary to conduct a review to determine the extent to which assistance requested by the Governor or his/her authorized representative is warranted;

(C) Based on the recommendation of the Secretary, recommend approval or disapproval of the application for assistance under this section; and forward the recommendation and documentation to the Assistant Associate Director;

(D) Assist the State in preliminary surveys and provide guidance and technical assistance (through the Secretary) if requested to do so; and

(E) Look to the Secretary for program oversight and monitoring.

(2) The Secretary shall:

(i) Provide technical assistance to the Regional Director in reviewing a State's application, to a State during program implementation and development, and to mental health agencies, as appropriate;

(ii) At the request of the Regional Director, conduct a review to verify the extent to which the requested assistance is needed and provide a recommendation on the need for supplementary Federal assistance. The review must include:

(A) A verification of the need for services with an indication of how the verification was conducted;

(B) Identification of the Federal mental health programs in the area, and the extent to which such existing programs can help alleviate the need;

(C) An identification of State, local, and private mental health resources, and the extent to which these resources can assume the workload without assistance under this section, and the extent to which supplemental assistance is warranted;

(D) A description of the needs; and

(E) A determination of whether the plan adequately addresses the mental health needs;

(iii) If the application is approved, provide grant assistance to States or the designated public or private entities;

(iv) If the application is approved, monitor the progress of the program and perform program oversight;

(v) Coordinate with, and provide program reports to, the Regional Director and the Assistant Associate Director; and

(vi) Make the appeal determination involving allowable costs and termination for cause as described in paragraph (h)(3) of this section.

(3) The Assistant Associate Director shall:

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(i) Approve or disapprove a State's request for assistance based on recommendations of the Regional Director and the Secretary;

(ii) Obligate funds and authorize advances of funds to the Department of Health and Human Services;

(iii) Request that the Secretary designate a Project Officer; and

(iv) Maintain liaison with the Secretary.

(f) *Time limitations*—(1) *Application filing*. The Governor or his/her authorized representative must, not later than 60 days from the date of declaration of a major disaster, submit an application to the Regional Director.

(2) *Program period*. The authorized program period shall not exceed nine months from the first day disaster crisis counselors are trained, or if training is not part of the program, the first day services are provided, except that upon the request of the Regional Director and the Secretary, the Assistant Associate Director may authorize up to 90 days of additional program period because of documented extenuating circumstances.

(g) *Eligibility guidelines*—(1) *For services*. An individual may be eligible for crisis counseling services if he/she was a resident of the designated major disaster areas or was located in the area at the time of the major disaster and if:

(i) He/she has a mental health problem which was caused or aggravated by the major disaster or its aftermath; or

(ii) He/she may benefit from preventive care techniques.

(2) *For training*. (i) Those mental health specialists who are employed under or are consultants to the crisis counseling program are eligible for the specific instruction that may be required to enable them to provide professional mental health crisis counseling to eligible individuals.

(ii) All Federal, State and local disaster workers responsible for assisting disaster victims are eligible for general instruction designed to enable them to deal effectively and humanely with disaster victims.

(h) *Grant awards*. (1) The amount of any regular program grant award shall be determined on the basis of the Secretary's estimate of the sum necessary to carry out the grant purpose. The Assistant Associate Director will, depending on availability of funds, advance funds to HHS for regular program funding. The Regional Director may advance funds to a State for immediate services.

(2) Neither the approval of any application nor the award of any grant commits or obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of any approved application.

(3) Several other regulations of the Department of Health and Human Services apply to grants under this section. These include, but are not limited to:

45 CFR Part 16—HHS grant appeals procedures

42 CFR Part 50, Subpart D—PHS grant appeals procedures

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services (effectuation of Title VI of the Civil Rights Act of 1964)

45 CFR Part 81—Practice and procedure for hearings under Part 80

45 CFR Part 84—Nondiscrimination on the basis of handicap in Federally-assisted programs

45 CFR Part 86—Nondiscrimination on the basis of sex in Federally-assisted programs

45 CFR Part 91—Nondiscrimination on the basis of age in Federally-assisted programs.

(4) Any funds granted pursuant to this section shall be expended solely for the purposes specified in the approved application and budget, these regulations, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

(i) *Reporting requirements*—(1) *Grantees (States, public or private agencies)*. The grantees shall submit the following reports to the Secretary, the Regional Director, and the State Coordinating Officer:

(i) Quarterly progress reports, as required by the Regional Director or the Secretary;

(ii) A final program report, to be submitted within 45 days after the end of the program period;

(iii) An interim accounting of funds, to be submitted with the final program report;

(iv) A final accounting of funds, if required, upon completion of the audit; and

(v) Such additional reports as the FCO, SCO, or Secretary may require.

(2) *The Secretary.* As part of project monitoring responsibilities, the Secretary shall report to the Assistant Associate Director and to the Regional director at least quarterly on the progress of crisis counseling programs, in a report format jointly agreed upon by the Secretary may also be required to provide special reports, as requested by the FCO. The Secretary shall require progress reports and other reports from the grantee to facilitate his/her project monitoring responsibilities.

(j) *Financial accountability.* All Federal funds made available to grantees under this section shall be properly accounted for as Federal funds in the accounts of the grantees. The Secretary is accountable to FEMA for funds made available to the Department under section 413. The Secretary shall, within 90 days of completion of a program, submit to the Assistant Associate Director a final accounting of all expenditures for the program and return to FEMA all excess funds. Attention is called to the requirements of 44 CFR Subpart I, relating to the reimbursement of Federal agencies by FEMA.

(k) *Federal audits.* The crisis counseling program is subject to Federal audit. The Associate Director, the Regional Director, the FEMA Inspector General, the Secretary, and the Comptroller General of the United States, or their duly authorized representatives, shall have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under this section for the purpose of audit and examination.

[50 FR 9629, Mar. 11, 1985]

§ 205.60 Use of gifts and bequests for disaster assistance purposes.

(a) *Introduction.* By publishing this regulation, FEMA gives notice of the establishment of a special disaster assistance fund made possible by a bequest of funds from the late Cora C. Brown of Kansas City, Missouri, who left a portion of her estate to the United States for helping victims of natural disasters and other disasters not caused by or attributable to war. FEMA intends to use the funds, and any others that may be bequeathed under this authority, in the manner and under the conditions described below.

(b) *Purposes for awarding funds.* Money from the Cora Brown Fund may only be used to provide for disaster-related needs that have not been or will not be met by governmental agencies or any other organizations which have programs to address such needs; however, the fund is not intended to replace or supersede these programs. For example, if assistance is available from another source, including the Individual and Family Grant program and government-sponsored disaster loan assistance, then money from the Cora Brown Fund will not be available to the applicant for the same purpose. Listed below are the general categories of assistance which can be provided by the Cora Brown Fund:

(1) Disaster-related home repair and rebuilding assistance to families for permanent housing purposes, including site acquisition and development, relocation of residences out of hazardous areas, assistance with costs associated with temporary housing or permanent rehousing (e.g., utility deposits, access, transportation, connection of utilities, etc.);

(2) Disaster-related unmet needs of families who are unable to obtain adequate assistance under the Disaster Relief Act, or from other sources. Such assistance may include but is not limited to: health and safety measures; evacuation costs; assistance delineated in the Disaster Relief Act or other Federal, State, local, or volunteer programs; hazard mitigation or floodplain management purposes; and assistance to self-employed persons (with no em-

ployees) to reestablish their businesses; and

(3) Other services which alleviate human suffering and promote the well-being of disaster victims. For example, services to the elderly, to children, or to handicapped persons, such as handyman or chore services, transportation, recreational programs, provision of special ramps, or hospital or home-visiting services. The funds may be provided to individual disaster victims, or to benefit a group of disaster victims.

(c) *Conditions for use of the Cora Brown Fund.* (1) The Cora Brown Fund is available only when the President declares that a major disaster or emergency exists under the Disaster Relief Act, only in areas designated as eligible for Federal disaster assistance through notice in the FEDERAL REGISTER, and only at the discretion of the Assistant Associate Director, Office of Disaster Assistance Programs, FEMA. The fund is limited to the initial endowment plus accrued interest, and this assistance program will cease when the fund is used up.

(2) A disaster victim normally will receive no more than $2,000 from this fund in any one declared disaster unless the Assistant Associate Director determines that a larger amount is in the best interest of the disaster victim and the Federal Government. Funds to provide service which benefit a group may be awarded in an amount determined by the Assistant Associate Director, based on the Regional Director's recommendation.

(3) The fund may not be used in a way that is inconsistent with other Federally mandated disaster assistance or insurance programs, or to modify other generally applicable requirements.

(4) Funds awarded to a disaster victim may be provided by FEMA jointly to the disaster victim and to a State or local agency, or volunteer organization, to enable such an agent to assist in providing the approved assistance to an applicant. Example: Repair funds may be provided jointly to an applicant and the Mennonite Disaster Service, who will coordinate the purchase of supplies and provide the labor.

(5) Money from this fund will not duplicate assistance for which a person is eligible from other sources.

(6) In order to comply with the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended, any award for acquisition or construction purposes shall carry a requirement that any adequate flood insurance policy be purchased and maintained. The Assistant Associate Director shall determine what is adequate based on the purpose of the award.

(7) The fund shall be administered in an equitable and impartial manner without discrimination on the grounds of race, color, religion, national origin, sex, age, or economic status.

(8) Funds awarded to a disaster victim from this fund may be combined with funds from other sources.

(d) *Administrative procedures.* (1) The Assistant Associate Director, Office of Disaster Assistance Programs, shall be responsible for awarding funds and authorizing disbursement.

(2) The Comptroller of FEMA shall be responsible for fund accountability and in coordination with the Assistant Associate Director, for liaison with the Department of the Treasury concerning the investment of excess money in the fund pursuant to the provisions of Pub. L. 96-446.

(3) Each FEMA Regional Director may submit requests to the Assistant Associate Director on a disaster victim's behalf by providing documentation which consists of the disaster victims needs and supporting documentation, including a verification of the disaster victim's claim, a record of other assistance which has been or will be available for the same purpose, and his/her recommendation as to the items and the amount. The Assistant Associate Director shall review the facts and make a determination, If the award amount is below $2,000, the Assistant Associate Director may appoint a designee to have approval authority; approval authority of $2,000 or above shall be retained by the Assistant Associate Director. The Assistant Associate Director shall notify the Comptroller of a decision for approval, and the Comptroller shall order a check to be sent to the disaster victim (or joint-

ly to the disaster victim and an assistance organization), through the Regional Director. The Assistant Associate Director shall also notify the Regional Director of the decision, whether for approval or disapproval. The Regional Director shall notify the disaster victim in writing, and identify any award as assistance from the Cora Brown Fund.

(4) If the award is to be for a service to a group of disaster victim's, the Regional Director shall submit his/her recommendation and supporting documentation to the Assistant Associate Director (or his/her designee if the award is below $2,000), who shall review the information and make a determination. In cases of approval, the Assistant Associate Director shall request the Comptroller to send a check to the intended recipient or provider, as appropriate. The Assistant Associate Director shall notify the Regional Director of the decision. The Regional Director shall notify a representative of the group in writing.

(5) The disaster victim may appeal the Assistant Associate Director's (or his/her designee's) decision by submitting a written statement to the Associate Director, State and Local Programs and Support, through the Regional Director. The appeal letter must be dated no less than 15 days after the date of the notification letter sent to the disaster victim by the Regional Director. The Regional Director shall forward the appeal letter, along with any additional information relevant to the appeal, to the Associate Director within 15 days of the receipt of the appeal in the Regional office. The Associate Director will consider the additional information from both sources, and shall make a decision promptly. If the decision is for approval, the check procedures in paragraph (d)(3) of this section, shall be followed. If the decision is to deny the appeal, the Associate Director shall notify the disaster victim in writing, through the Regional Director.

(6) The Comptroller shall process requests for checks, shall keep records of disbursement and balance in the account, and shall provide the Assistant Associate Director with quarterly reports.

(e) *Audits.* The Inspector General of FEMA shall audit the use of money in this account to determine whether the funds are being administered according to these regulations and whether the financial management of the account is adequate. The Inspector General shall provide his/her findings to the Associate Director, State and Local Programs and Support, for information, comment, and appropriate action. A copy shall be provided to the Comptroller for the same purpose.

(f) *Effective date.* Assistance will be made available as of June 24, 1983 in connection with any declared major disaster or emergency.

[48 FR 28991, July 24, 1983]

Subpart E—Public Assistance

SOURCE: 45 FR 53957, Aug. 13, 1980, unless otherwise noted.

§ 205.70 General.

This subpart provides policies and guidelines for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs of Pub. L. 93-288, as amended. It includes criteria for determining eligibility of assistance under sections 305, 306, 402, 403, 415, 416, 418, and 419 of Pub. L. 93-288, as amended. Refer also to Subparts J, K, and M, and to 44 CFR Parts 9 and 10 of these regulations for additional guidance related to eligibility determinations.

§ 205.71 Definitions.

(a) "Educational institution" means:

(1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965;

(2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or

(3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) "Predisaster condition" means the state of repair or serviceability of a facility immediately prior to the disaster, taking into consideration prior damages, age, deterioration, and any limitations upon its operation.

(c) "Predisaster design" means the size and capacity of a facility when the major disaster occurred, taking into account its major features, as originally placed in service but updated by any modernization or expansion of the facility, prior to the major disaster, to provide added capacity for public services.

(d) "Private nonprofit facility" means any private nonprofit educational, utility, emergency, medical, and custodial care facility, including those for the aged or disabled, and those on Indian reservations.

(1) "Educational facilities" means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include:

(i) Buildings, structures and related items used primarily for athletic exhibitions, contests, games or other events for which admission is charged to the general public, such as athletic stadiums, gymnasiums, and swimming pools.

(ii) Buildings, structures and related items used primarily for religious purposes or primarily in connection with any part of the program of a divinity school, or department of divinity, as defined by section 1201 of the Higher Education Act of 1965.

(2) "Utility" means buildings, structures, or systems of any power, energy, telephone, water supply, sewage collection and treatment, or other similar public service. An irrigation system is not a "utility".

(3) "Emergency facility" means those buildings, structures, or systems used primarily to provide emergency services, such as fire protection, ambulance, or rescue, to the general public.

(4) "Medical facility" means any hospital, outpatient facility, rehabilitation facility, or facility for long term care, as defined by the Associate Director, and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(5) "Custodial care facility" means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for such persons as the aged and disabled; such persons do not require day-to-day care by doctors or by other professionals but do require close supervision and some physical constraints of their daily activities.

(e) "Private nonprofit organization" means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under section 501 (c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the non-revenue producing organization or entity is a nonprofit one organized or doing business under State law.

(f) "Standards" as used in this subpart means codes, specifications, or standards.

§ 205.72 Applicant eligibility.

(a) "Within the disaster area designated by the Associate Director, State or local governments, as defined in 44 CFR Part 205, Subpart A, are eligible applicants.

(b) Private nonprofit organizations or institutions, owning and operating educational, utility, emergency, medical or custodial care facilities, are eligible applicants.

(c) An Indian tribe (or authorized tribal organization or Alaskan village or organization, which exists for public service,) is also an eligible applicant. In those cases where the State is unable or unwilling to process a project application on its behalf, such applicant may submit its project application directly to the Regional Director.

(d) A public entity is eligible for assistance when its requests are submitted by a State or a political subdivision of the State. Organizations which are formed for a public purpose and whose direction and funding are provided primarily by one or more political subdivisions of the State are normally considered to be public entities.

(e) Any rural community or unincorporated town or village may be eligible when an application for Federal assistance is made by a State or a political subdivision of the State on its behalf.

(f) *Eligibility of applicants for emergency snow removal assistance.* (1) To qualify as an eligible applicant, any State or local government (as defined in section 102(4) or (6), of the Act) must have adequately documented responsibility for emergency snow removal from thru public roads or thru public streets.

(2) Private non-profit organizations are not eligible.

(g) Under Pub. L. 93-288 grants to eligible applicants are discretionary and are based on FEMA grant approval for proposed work and subject to any conditions upon which that grant approval was based.

[45 FR 53957, Aug. 13, 1980, as amended at 45 FR 64585, Sept. 30, 1980]

§ 205.73 General work eligibility.

(a) *General.* To be eligible for financial assistance, an item of work must:

(1) Be for a purpose set forth in the Act and these regulations.

(2) Be required as the result of the major disaster or emergency, and

(3) Be located within a disaster area designated by the Associate Director.

(b) *Work under other Federal agency programs.* Disaster assistance under the Act is not available for work which other Federal agencies may fund under their own statutory authorities, except under unusual circumstances approved by the Regional Director. When another Federal agency (OFA) has authority and the necessary funds available to restore facilities damaged or destroyed by a major disaster or emergency that OFA funding authority shall be used instead of FEMA funding.

(c) *Restoration of leased facilities.* (1) Applicant-owned facilities are eligible, except when leased and the lease places such responsibility on the lessee.

(2) Facilities owned by others but under lease to an applicant are eligible to the extent of the applicant's responsibility under the lease.

(d) *Assurances.* As a condition for any grant or loan under the Act, the State and the applicant shall provide the assurances required by the Regional Director and accompanying the project application or loan application. These assurances are legally binding when offered by the applicant and the State, and approved by the Regional Director.

(e) *Facilities serving a rural community or unincorporated town or village.* To be eligible, a facility or system not owned by a State or local government must meet the following requirements:

(1) The facility is located in and/or serves an unincorporated community, town, or village; *and*

(2) Ownership is vested in a not-for-profit organization; *and*

(3) Proposed work on the facility satisfies eligibility requirements otherwise applicable to public facilities under section 306 of the Act and must be necessary to restore essential public services on an emergency basis.

(f) *Grants-in-lieu.* A grant-in-lieu is a categorical grant, based on work eligible under section 306 or 402(e) of the Act, which the grantee may use to provide a larger, more elaborate or equivalent facility that as a minimum replaces the design or capacity of the public facility damaged or destroyed by the major disaster. The facility to which the grant-in-lieu is applied must be restored to its predisaster capacity and serve the same purpose or function as the damaged facility.

(g) *Time limitations.* Timely performance of eligible work is necessary to minimize costs of work and to avoid delays in restoration of public services. The Regional Director may approve reimbursement to an applicant for eligible work performed prior to the Federal damage survey, but within the time limitations and the disaster-affected area. When, due to circumstances not beyond its control, an applicant fails to comply with the approved time limitations, the Associate Director, or his/her designee may decline to approve an extension of time for starting or completing the approved work.

(h) *Maintenance.* Routine or regular maintenance is not eligible. To be eligible, repairs or replacements of damaged facilities which are of the types usually performed as maintenance, must:

(1) Be of disaster scope and magnitude, and

(2) Be essential to restore the disaster condition and design of the damaged or destroyed facilities, and

(3) Be performed on an expedited basis.

§ 205.74 Emergency work.

(a) *General.* (1) Emergency work is eligible under section 305 or 306 of the Act to provide emergency protective measures to save lives, to protect public health and safety, and to protect property as the result of a declared major disaster or emergency; under section 306 or 403 for debris removal; under section 415 for Emergency Communications; and under section 416 for Emergency Public Transportation.

(2) When immediately necessary and no lesser emergency work is feasible, permanent restorative work on facilities damaged or destroyed by a major disaster or emergency may be expedited as emergency work under section 305 or 306 of the Act. Eligibility of such emergency work shall be determined separately from any other permanent restorative work eligible under section 402 of the Act.

(3) In determining public interest for emergency work for which these regulations require such determination, the Regional Director shall determine whether the work is necessary to:

(i) Eliminate immediate threats to life, public health, and safety; or

(ii) Eliminate an immediate hazard which threatens substantial destruction of undamaged improved public or private property; or

(iii) Assure economic recovery of the affected community to the benefit of the community-at-large; or

(iv) Provide emergency facilities when necessary to resume essential public services.

(4) In determining whether such emergency work is in the public interest, the Regional Director may require certification by local, State, or Federal health officials, including identification and evaluation of the threat and recommendations of the emergency work necessary to cope with the threat. Refer also to 44 CFR 205.70.

(b) *Debris removal.* No such work shall be performed unless the affected State or local government first provides to the Regional Director written assurances of rights of entry and indemnification required by FEMA. When approved in the public interest by the Regional Director the following types of emergency work are eligible:

(1) Clearance of debris and wreckage from publicly and privately owned land and waters.

(2) Demolition and removal of public and private buildings damaged beyond repair.

(3) Cleanout of reservoirs, debris catch basins, streams, and opening of drainage channels or facilities only under section 306 or 403 of the Act. Such clearance shall be limited to the removal of materials which are foreign to that facility and which were deposited by the disaster. It is not in the public interest to clean out debris catch basins at Federal expense that have a remaining capacity of storing debris that could be expected from a five-year storm. In determining public interest, past history of clean out of such facility shall be considered. Some removal of debris, deposited prior to the Presidential declaration, may be required as a condition for Federal funding under this section.

(c) *Emergency protective measures.* (1) The Regional Director may approve emergency protective measures under section 306(a)(4) of the Act which he/she determines are in the public interest. Such emergency work to protect property must be justified further by favorable benefits when compared to Federal costs involved and by providing widespread benefits to the community-at-large.

(2) Emergency protective work to prevent additional damage to improved property is eligible only when the effects of a declared major disaster or emergency have severely damaged or destroyed facilities and further destruction to improved property is threatened soon by subsequent similar disasters or emergencies. When approved, such emergency work is limited to the essential measures required to protect the community-at-large

against similar disasters or emergencies that would be expected to occur not less frequently than every five years, or to restore protection as existed prior to the disaster, whichever is lesser.

(3) *Removal of health and safety hazards.* The following are examples of measures that may be eligible when approved in the public interest by the Regional Director: disposal of dead animals; drainage of water trapped as a result of a major disaster or emergency; pumping of basements only where there is flooding of numerous basements in the disaster-affected area; decontamination of private wells or pumping septic tanks only where pollution problem is widespread; vector control of insects involving a serious health hazard to humans.

(4) *Landslides.* To be eligible for FEMA reimbursement, emergency work shall be performed during the incidence period for the major disaster or emergency, except under unusual circumstances where the Regional Director determines that the proposed work is primarily disaster-related and in the public interest. Examples are debris removal, simple drainage measures, and emergency repairs to damaged public facilities. Permanent stabilization of a landslide is not attainable usually by such emergency measures.

(5) *Emergency access.* An access facility that is not publicly owned or is not the direct responsibility of an eligible applicant or grantee for operation and maintenance may be eligible for emergency repairs or replacement provided:

(i) The Regional Director determines that emergency repair or replacement of the facility is in the public interest, or economically eliminates needs for temporary housing, with no alternative access facilities immediately available within a reasonable distance, and

(ii) The necessary emergency work can be provided on a one-time basis can and will in no way obligate the Federal Government to fund further emergency work or maintenance.

(6) Emergency snow removal assistance.

(i) *Definitions*: (A) "Local roads and streets" means local county roads and city streets which do not serve thru traffic and are of only local interest. Their main function is to provide access to abutting property.

(B) "Collector roads and streets" means local collector roads and streets which serve thru traffic and provide access to higher type roads and facilitate community activities but are primarily of local interest. One of their major functions is to provide access of abutting property.

(C) "Minor arterial roads and streets" means roads and streets which serve thru traffic and provide access to higher type roads, connecting communities in nearby areas in addition to serving adjacent property.

(D) "Principal arterials" means roads and streets which serve thru traffic and are of statewide interest. They carry high volumes of traffic between population centers and are designed to facilitate traffic movement with limited land access. It also means roads and streets which serve thru traffic only and provide no access to abutting property. (For further clarification, refer to the functional classifications for highways as determined pursuant to 23 CFR 470.107(b)(3).)

(ii) *Eligible work.* When approved by the Regional Director, the following types of facilities are eligible:

(A) Thru traffic lanes of collector roads and streets; minor arterial roads and streets; and principal arterials.

(B) Tracks and rights-of-way of urban mass transit systems only when necessary for the resumption of urban high volume traffic.

(iii) *Ineligible work.* The following types of facilities are not eligible:

(A) Local roads and streets (these normally will include alleys and cul-de-sacs and residential streets where 24-hour parking is permitted during snow emergencies).

(B) Other facilities including:

(*1*) Parking lots (except where needed and used for emergency snow removal operations).

(*2*) Playgrounds.

(*3*) Recreational or park facilities.

(*4*) Airports (except for emergency road access).

(*5*) Public housing authorities (except for emergency entrance to housing areas).

(6) Cultural facilities.

(7) Hospitals and other medical care facilities (except for emergency access).

(7) Work that is immediately necessary as the result of a major disaster and directly related to permanent work eligible to be performed later under section 402 of the Act will normally be approved by the Regional Director in the public interest as emergency protective measures under section 306 of the Act.

(8) *Water control facilities.* Emergency work on water control facilities shall be limited to that required to insure the structural integrity of the damaged facilities or to restore disrupted public services when necessary to meet emergency needs of the community-at-large.

(9) *Ice jams.* FEMA assistance to remove ice jams is not eligible.

(10) Emergency protective facilities installed will be eligible for removal under the Act only when such facilities are directly affecting the operations of, or access to, public facilities required by the applicant in its normal day to day operation.

(d) *Emergency communications.* The Regional Director is authorized as the result of an emergency or major disaster to establish emergency communications and make them available to State and local government officials and other persons as he/she deems appropriate. Such emergency communications are ordinarily intended for use as necessary to carry out the disaster relief functions. Communications provided under this section are intended to supplement but not replace normal communications that remain operable after a major disaster. These emergency communications will be discontinued immediately when the essential emergency communications needs of FEMA and the community have been met.

(e) *Emergency public transportation.* The Regional Director may provide emergency public transportation in a disaster-affected area to meet emergency needs and to provide transportation to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible. Any transportation provided under this section is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding of such emergency transportation will be discontinued by the Regional Director as soon as the emergency needs have been met.

[45 FR 53957, Aug. 13, 1980, as amended at 45 FR 64585, Sept. 30, 1980]

§ 205.75 Permanent work.

(a) *General*—(1) *Applicability.* Permanent work is eligible under section 402 of the Act and these regulations and includes help to eligible applicants to repair, restore, reconstruct, or replace eligible facilities on the basis of the design of the facilities as they existed immediately prior to the disaster and in conformity with applicable standards. Criteria for determining eligibility of permanent work are the same for categorical, flexible funding, and small project grants.

(2) *Standards.* (i) To be applicable for Federal grant assistance under section 402 of the Act, standards for repairs, or for new construction, must be in writing, formally adopted, enforced, and in general use when the major disaster occurred, except:

(A) Those standards prescribed by the Associate Director

(B) Those standards authorized as deviations by the Associate Director.

(ii) In those cases where no standards are applicable, Federal grant assistance for permanent work under the Act shall be limited to restoring the facility to its predisaster condition and predisaster design to the extent practicable.

(iii) In restoring damaged or destroyed facilities by use of grant assistance for permanent work under the Act, the Regional Director may authorize minor disaster proofing not required by applicable codes, specifications or standards, when in the public interest. Refer also to 44 CFR 205.70.

(iv) Under section 406 of the Act, as implemented by 44 CFR 205.402(d), the Associate Director may prescribe standards which then are applicable only to Federally-assisted projects for permanent work.

(v) Under section 402 of the Act, when the Associate Director determines that conformity to existing applicable standards will jeopardize public health and safety, he/she may authorize appropriate standards as deviations after consultations with the Regional Director, the Governor's Authorized Representative, and the applicants. Prior to the authorization of such deviations, the State or local government having jurisdiction in the affected areas shall also adopt and enforce these new standards for all like projects. Refer also to 44 CFR 205.70.

(3) *Materials*. For all eligible repairs, replacements, rebuilding or other restorative work, the most economical materials shall be used, taking into consideration the following: Predisaster design and condition of the facility; current applicable standards, if any; and predisaster public services or usage of the facility. Consideration shall also be given to protection of the environment (44 CFR Part 10) and to floodplain management, if applicable, (44 CFR Part 9).

(4) *Public interest*. Refer also to 44 CFR 205.70. In determining whether permanent work is in the public interest, the Regional Director shall determine that:

(i) The applicant and the work involved are eligible under the Act and these regulations.

(ii) The work is necessary for the benefit of the community-at-large.

(iii) The outlook for continued future public use of the restored facility and the ratio of benefits to costs of restoration are favorable.

(5) *Repairs*. (i) A facility is considered repairable when in terms of current applicable standards for repairs in effect at the time of the disaster:

(A) It is feasible to repair the facility so that it can perform the function for which it was designed as well as it did immediately prior to the disaster; and

(B) Such repairs can be made at a cost less than the estimated cost of replacing the damaged structure on the basis of its design immediately prior to the disaster; and

(C) Such permanent repairs are a practicable alternative under 44 CFR Part 205, Subpart M, 44 CFR Parts 9 and 10 when applicable and are determined by the Regional Director to be in the public interest. If not, the Regional Director may authorize emergency repairs under section 306, Pub. L. 93-288, to restore essential public service and shall then decline to approve any permanent restorative work in accordance with 44 CFR Part 9.

(ii) If the facility was in a damaged or unsafe condition prior to the major disaster, the applicant shall agree to pay the cost of correcting any such conditions as a prerequisite to Federal assistance.

(iii) Only those repairs will be approved which restore the portions of the structure damaged by the major disaster.

(6) *Replacement*. If a damaged facility is not repairable to predisaster condition as determined by the Regional Director, approved restorative work shall include replacement of the facility on the basis of its predisaster design, in conformity with applicable standards for new construction. Refer also to 44 CFR Parts 9 and 10 and to 44 CFR Part 205, Subpart M, for additional guidance where applicable.

(7) *Relocation*. When the Regional Director determines that there is a practicable alternative to restoring a facility in a high hazard area he/she may approve relocation to the less hazardous site. In each such case an environmental assessment is required and the applicant shall provide the new site. Refer also to 44 CFR 205.76(e)(6).

(8) *Feasibility studies*. In those cases where the decision to repair or to replace the damaged facility depends upon the relationship between repair costs and replacement costs, and the project is of sufficient magnitude, a feasibility study may be undertaken.

(9) *Limited use facilities*. Facilities which were in limited use prior to the disaster, or were being used for other purposes than originally designed, may be eligible for assistance only to the extent necessary to restore immediate predisaster capacity for such use

(10) *Inactive facilities*. Facilities that were not in active use at the time of occurrence of the major disaster are not eligible except in those instances, as determined by the Regional Director, where the facilities were only tem-

porarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget and was scheduled prior to the major disaster to begin within a reasonable time.

(11) *No action.* (i) The Regional Director may decline to approve Federal funding to restore facilities at the original site when such facilities were subject to frequent repetitive heavy damages or destruction.

(ii) The Regional Director shall decline to approve Federal funding when he/she determines in accordance with 44 CFR Part 9, 10, or 205, Subpart M that FEMA funding is barred. For each such determination, there is no flexible funding option under section 402(f) or in lieu contributions under section 419, Pub. L. 93-288, as amended.

(12) *Nonessential features.* Although constructed and maintained by the applicant, non-functional features of a facility only of aesthetic value are not eligible.

(13) *Furnishings and equipment.* Comparable used or surplus furnishings and equipment will be approved as replacement items when available. Only those functional furnishings and equipment essential to the maintenance and operation of the facility are eligible.

(14) *Consumable supplies.* Consumable supplies damaged or lost in a disaster are eligible for replacement but limited to a 30-day requirement of each item replaced. However, the Regional Director may approve additional requirements for certain items for which he determines that minimum economical stockage levels exceed 30 days.

(15) *Seeding.* Seeding shall normally be limited to broadcast seeding without mulching or fertilizer during the regular seasons when such work is performed locally. The Regional Director may approve broadcast seeding to retard erosion in disaster-affected areas and in areas disturbed by eligible work.

The Regional Director may approve mulching, fertilizer, and watering only on highway slopes or where required to maintain the structural integrity of a facility, and in areas where sodding is eligible but seeding is substituted.

(16) *Sodding.* Sodding is not eligible except when the local practices of the applicant would require sodding as in golf greens and in certain grassy areas in parks or public places. Seeding shall be substituted whenever feasible.

(17) *Landslides.* Section 402 of the Act provides for restoration of damaged or destroyed facilities which are man-made features or improvements. The site is the owner's responsibility. Permanent stabilization of a landslide area can be quite costly and may not produce the desired results. When the Regional Director determines that no practicable alternative exists, he may decline to provide such grant assistance for restoration of facilities within the slide area. Permanent work to stabilize a landslide is not eligible.

(b) [Reserved]

(c) *Road and street facilities or systems*—(1) *Width standards.* The Associate Director has prescribed minimum bridge width standards which are applicable to bridge replacement (but not to repairs) involving FEMA funding. These standards appear in applicable handbooks and may be superseded by changes when approved by the Associate Director.

(2) *Approach roads.* If the approach roads were undamaged and a bridge can be replaced at the existing site without unacceptable traffic safety hazards, the Regional Director may approve eligible restoration costs to replace the bridge at that site in accordance with current applicable standards. If relocation of the bridge is approved to achieve a safer road alignment, any replacement of existing, undamaged approach roads and all other work on approach roads not resulting directly from major disaster damages are the responsibility of the applicant. Such relocated approach roads of any replacement bridge shall conform at least to the minimum American Association of State Highway and Transportation Officials (AASHTO) standards outlined in Tables 1 thru 7, AASHTO Geometric Design Guide for Local Roads and Streets. Skewing of any replacement bridge to conform to a FEMA-approved safer alignment is eligible for Federal reimbursement. If

an applicant decides not to provide at its own cost the approach roads, relocated and upgraded to minimum AASHTO standards, Federal assistance under the Act shall be limited to a replacement bridge at the original location with the same capacity as existed at the time of the disaster and with width not exceeding the minimum safe standards stated above.

(3) *Sidewalks.* Sidewalks on bridges are not eligible unless they existed on the damaged bridge prior to the disaster, or are required by current, applicable standards.

(4) *Waterway openings.* In the design of bridge and culvert waterway openings, consideration will be given to the drainage area involved above and below the bridge site. Federal regulations pertaining to the National Flood Insurance Program provide for prevention of "new enroachments" into 100-year floodway. However, the replacement of bridges under the Act which were damaged or destroyed is not "new encroachment" within the meaning of those regulations. Waterway openings for bridges and culverts shall be based on predisaster design and capacity in accordance with current applicable standards and additional guidance in 44 CFR Part 205, Subpart M, 44 CFR Part 9 or 10.

(5) *Floodway.* Work in floodway related to bridge restoration, including lining and straightening or bank protection such as rip-rap that did not exist prior to the major disaster, is not eligible unless such work will reduce overall project costs of new construction eligible for Federal funding.

(6) *Traffic standards.* Determination of predisaster capacity for handling traffic of bridges damaged or destroyed as a result of a major disaster shall be based on the average daily traffic which the bridge carried immediately prior to the disaster.

(7) *New drainage structures.* Construction of new drainage structures in those cases where lack of drainage structures caused flooding damage is not eligible, except for disaster proofing. In accordance with 44 CFR Part 9 or 10 of these regulations, the Regional Director may require that an applicant provide without reimbursement adequate drainage structursor erosion-resistant structures, as a condition for approval of Federal grant assistance for the placement of a fill, embankment, or other facility.

(8) *Culverts.* Culverts that are washed out and destroyed may be replaced by culverts of similar construction or by larger culverts if required by applicable standards. However, if a culvert is merely plugged, and no other damage has been sustained, cleaning of the culvert is routine maintenance and therefore is not eligible.

(d) *Water control facilities.* (1) Repairs or other restorative work will not exceed restoration in accordance with current applicable standards including appropriate hazard mitigation measures as practiced by the applicant throughout its system of other like facilities:

(i) Predisaster condition and design capacity,

(ii) Previously existing elevations, and

(iii) Cross sections.

(2) In those cases where inadequate maintenance by the applicant prior to a major disaster significantly diminished the predisaster design or hydraulic capacity of a facility or system, the Regional Director shall require the applicant to correct the maintenance deficiencies of the entire facility or system as a condition for Federal grant approval. The approval will be limited to restoration of the design and condition of the facility or system as it existed immediately prior to the major disaster. The applicant shall submit a plan and schedule for the required maintenance work acceptable to the Regional Director before his/her approval of otherwise eligible costs. If these conditions are not satisfied, the Regional Director may decline to approve Federal assistance. Final payment of approved Federal assistance may not be made until the design capacity of the facility or system has been restored and all maintenance deficiencies have been corrected.

(e) *Public buildings and equipment*—(1) *Repairs to buildings.* Where an eligible building receives extensive damage but remains structurally sound, the Federal contribution is limited to repairing the damage in accordance with applicable standards for repairs.

(2) *Replacement of buildings.* When a publicly-owned building is destroyed or damaged to the extent that the Regional Director determines that it would not be feasible to perform repairs, a replacement structure may be authorized, with its eligible capacity not to exceed the capacity of the original structure.

(3) *Office equipment.* When damage to office equipment is repairable, only repair is authorized. Comparable office equipment such as typewriters, desks and chairs, when available from Federal and State surplus or commercially, shall be procured for repalcement items.

(4) *Service equipment.* Police cars and motorcycles, fire trucks, public works construction and maintenance equipment, and other such equipment damaged as a direct result of the disaster, but not as the result of the disaster operations, are eligible for repair or replacement in accordance with the following criteria:

(i) *Repairs.* (A) Only those repairs necessary to return service equipment to its predisaster repair standards are eligible. The allowable repairs normally will not exceed the "Blue Book" retail value of the piece of equipment, less any salvage value and insurance recoveries.

(B) As a condition for Federal grant assistance for repairs, the applicant shall correct any predisaster deficiencies needed to restore the service equipment to safe operating condition without Federal assistance except for disaster-related eligible repairs.

(ii) *Replacement.* Non-repairable service equipment will normally be replaced with used equipment of approximately the same age and value to the extent such equipment is readily available within a reasonable time and distance. Any equipment eligible for replacement must have been in active use or temporarily out of service.

(5) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. When damage to books is repairable, only repair is authorized. Federal grant assistance shall be based on used replacements, when resonably comparable and available. Discounts normally are available and must be considered. The Regional Director may authorize equivalent replacement, such as substituting microfilm copies of newspapers and periodicals, if they can be provided at no greater Federal cost than replacement of the damaged items in kind.

(f) *Public utilities.* (1) Repair of public utility distribution systems normally requires the same general type of materials as previously existed. If more economical and satisfactory alternate materials are available, they shall be used.

(2) Cleaning of storm and sanitary sewer lines damaged by the disaster is eligible only to the extent it is disaster-related and necessary to restore adequate functioning of the system under conditions expected each year.

(3) Repair or replacement of measuring devices such as meters is eligible only if the responsibility is that of the applicant.

(4) The Federal contribution shall not provide a higher level of sewage treatment. If a higher level of treatment is required to meet State or Federal standards, the additional cost of such facilities is the responsibility of the applicant.

(g) *Facilities under construction.* (1) "Under construction" means that period of time from the initiation of construction by applicant forces to final completion of all eligible work or from the award of the prime contract to the applicant's final acceptance of the facility from the contractor. Although the applicant may have accepted certain features of the project for use, the project is considered to be under construction until it is finally accepted.

(2) Only those repairs or replacements are eligible that are necessary to restore facilities damaged or destroyed by a major disaster substantially to predisaster condition. Restoration of the site or natural setting for such facilities is the owner's responsibility and is therefore not eligible. Disaster proofing is not eligible.

(h) *Private nonprofit facilities.* (1) Eligibility criteria for restorative work on facilities owned by eligible private nonprofit organizations are the same as for like work on similar facilities owned by any eligible applicant.

(2) As a condition for Federal grant assistance, such facilities must have been operated at the time of the major disaster in a manner to carry out fully the purposes of the facilities and of the owning organization or entity, except those facilities under construction.

(3) As a condition for Federal grant assistance, the eligible owning organization shall provide all assurances normally required from any applicant in submitting a project application plus any additional assurances required by the Regional Director, including but not limited to the following: The grant recipient shall operate and maintain the restored facilities continuously after completion throughout their useful life.

(4) The eligible owning organization must provide the necessary permits and licenses to repair, restore, reconstruct or replace the facility in accordance with the project application and subsequently to maintain and operate the facility. Refer also to 44 CFR 205.76(a)(15) and (a)(16).

(5) Repair or replacement of any educational facility is not eligible for which disaster relief assistance would not be authorized if it were a public facility under the Act, under Pub. L. 81-815, or Title VII of the Higher Education Act of 1965.

(6) Repair or replacement of any hospital or other medical care facility in any disaster-affected area is not eligible:

(i) For which disaster relief assistance would not be eligible under the Act if it were a publicly-owned facility, or

(ii) Where the Regional Director after consulting with the State hospital planning agency, determines that a significant surplus of such facilities exists, or

(iii) Where after consulting with the State hospital planning agency, he/she determines that a significant surplus of such facilities would be created by the proposed work, or

(iv) Unless the facility was in active use prior to the major disaster and providing significant medical services to the general public.

(i) *Publicly-owned parks and recreational facilities.* (1) Publicly-owned facilities which constitute physical installations in the area such as playgrounds, swimming pools, boat docks, bath houses, tennis courts, picnic tables, etc., are eligible for repair or replacement when damaged or destroyed as the result of a major disaster.

(2) Natural features of a publicly-owned park or recreational facility such as trees and shrubs may be restored to predisaster condition to the extent necessary to restore significant public services or use that the Regional Director determines to be reasonable and practicable and in the public interest.

(3) Repair or replacement of other damaged or destroyed natural areas is not eligible except to eliminate an immediate threat to public health and safety.

(j) *Removal of timber.* (1) When in the public interest, the Regional Director may approve grants to a State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster. Refer also to 44 CFR 205.76(e)(9).

(2) *Approved work practices.* Bent, twisted, downed timber of commercial value will be salvaged or cleared when approved under 44 CFR 205.75. This includes the construction of approved temporary access roads required for removal of the damaged timber.

(i) Slash created by approved timber removal may be disposed of by not more than one of the following practices when approved by the Regional Director:

(A) Prescribed burning.

(B) Drum chopping.

(C) Raking, windrowing, and burning.

(ii) Where such slash is to be burned, appropriate permits will be obtained from the Forestry Commission and/or other appropriate agency(ies), and other precautions and notifications made as required by law.

(iii) No such slash should be placed where it will interfere with existing drainage facilities.

[45 FR 53957, Aug. 13, 1980, as amended at 48 FR 44544, Sept. 29, 1983]

§ 205.76 Eligibility of costs.

(a) *General.* (1) This section provides policies and guidelines for determining eligibility of costs of work eligible under the Act that may be paid to any eligible applicant or other recipient of this grant assistance. The paragraphs which follow are generally applicable to eligibility of costs. Only reasonable costs of eligible work are reimbursable.

(2) Factors affecting eligibility of costs. To be eligible under a FEMA grant, costs must meet the following general criteria:

(i) Be necessary and reasonable for proper and efficient administration of the approved work, be allocable thereto under these regulations, and, except as specifically provided herein, not to be a general expense required to carry out the overall responsibilities of State or local governments.

(ii) Be authorized or not prohibited under State or local laws or regulations.

(iii) Conform to any limitations or exclusions set forth in these regulations, Federal laws, or other governing limitations as to types or amounts of cost items.

(iv) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

(v) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(vi) Not be allocable to or included as a cost of any other federally financed program.

(vii) Be net of all applicable credits.

(3) Funding to any applicant for costs that are reimbursable by another Federal agency under its own statutory authorities is not eligible under the Act.

(4) The amount of Federal reimbursement made to an applicant under categorical funding or under a small project grant is limited to the eligible cost of performing work approved by FEMA. This limitation is not intended to restrict the type and cost of work which the applicant may choose to undertake. If the applicant performs work in excess of the approved amount, Federal financial assistance is limited to the costs of eligible work approved by the Regional Director. Flexible funding under section 402(f) of the Act, is limited to 90 percent of the estimated costs of eligible permanent restorative work.

(5) The applicant may use assistance under the Act to supplement funds available from the grant programs of other Federal agencies, or from other sources provided that:

(i) There is no duplication of benefits prohibited by section 315 of the Act, or

(ii) Such funding is not in violation of applicable laws and Federal regulations.

(6) Approval of Federal funding may be withdrawn for any project not started within approved time limitations, including extensions. Federal funding is not eligible for work performed after the approved termination date, including extensions. Refer also to 44 CFR Part 205, Subpart H.

(7) *Administrative expenses.* Administrative expenses attributable to requesting, obtaining, and administering FEMA grant or loan assistance are not eligible, including but not limited to the following:

(i) Preparation or processing of project applications, reports, appeals, inspection reports, audits, and claims for payment.

(ii) Performance of owners responsibilities.

(iii) Operation of Emergency Operations Center.

(iv) Salaries, wages, and expenses of State and local officials who are responsible for directing regular governmental activities.

(v) Salaries, wages, fees, and expenses of individuals or firms while engaged in the preparation and processing of damage assessments, of project applications, claims for payment and supporting documentation, including costs of damage estimates.

(vi) Office supplies and equipment.

(vii) Rent.

(viii) Telephone and telegraph expenses.

(8) *Grant-in-lieu.* (i) The amount for which a grant-in-lieu is approved is

limited to the estimated costs of the eligible work.

(ii) Proportionate sharing of costs is not an acceptable method of determining eligible costs for a grant-in-lieu.

(iii) The only permissible basis for increasing or reducing the Federal funding under a grant-in-lieu is a substantial error or omission in defining the approved scope of eligible work or in the approved estimated reasonable costs of such work. In cases where the actual audited costs for completing the project are less than the approved grant-in-lieu, the final payment will not exceed the actual audited costs. In such cases the Regional Director or the Associate Director will make appropriate reductions in the Federal payment based on his/her determination of costs of completed betterments.

(9) *Equipment rental.* Rental of privately-owned equipment to perform eligible disaster work is eligible. However, the rental rates must be comparable to going rates in the locality for similar types of equipment. If not, reasonable rates as determined by the Regional Director shall be substituted in approval of project applications, or of claims. When auditable records are available, the actual audited costs of equipment may be considered in processing appeals.

(10) *Hand tools, materials, and supplies*—(i) *Eligible*: (A) Reasonable costs for materials and supplies consumed in eligible disaster work, including those procured by direct purchase or taken from applicant's stock.

(B) Costs of hand tools (shovels, handsaws, hammers, etc.), personal equipment, and protective clothing reasonably lost, worn out or destroyed through disaster use in performing eligible work.

(ii) *Not eligible*: Costs for losses, damage or destruction while in disaster or emergency use of radios, weapons, and other items used regularly in field operations by police and other employees whose duties do not change because of the disaster.

(11) *Salvage.* Salvage value of any damaged or destroyed property must be deducted in all determinations of eligibility of work and from final reimbursement to any claimant.

(12) *Stockpiled items.* Costs of all stockpiled items purchased under the Contributions Program (Pub. L. 920, 81st Congress, as amended) for civil defense purposes which are lost, damaged, or destroyed by a major disaster while in storage are not eligible.

(13) *Insurance.* (i) Cost of insurance required for performance of grant or loan assistance is eligible.

(ii) Insurance purchased by the State, the applicant, or grantee for its protection from any liability arising from assurances made to the grantor, or arising directly or indirectly from use of the grant shall be at the insured's expense and is not eligible.

(iii) The Regional Director shall reduce the grant by the actual applicable amount of insurance proceeds received by the grantee or by any prior insurance commitment for Federal assistance that is delinquent. In the event insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement is limited to eligible costs as determined by the Regional Director after deducting the maximum amount otherwise recoverable under and up to the limit of the policy.

(14) *Acquisition of lands, easements and rights-of-way.* Such acquisitions are the responsibility of the applicant, or grant recipient upon whose behalf project application was made. These costs are usually covered by the assurances accompanying the project application and are not eligible for Federal reimbursement except when approved in the public interest by the Associate Director under unusual circumstances requiring immediate action beyond State, applicant, or grantee's capabilities, or involving significant cost savings to the Federal Government.

(15) *Licenses.* The costs of Federal, State, or local licenses which are required for the grantee to operate and maintain completed facilities are not eligible. Meeting the requirements for licenses is the responsibility of the grantee.

(16) *Permits.* The costs of Federal, State, or local permits which are required to perform eligible work are eligible.

(17) *Loss of revenue.* Replacement of revenues lost as the result of a major

disaster or emergency is not eligible for grant assistance.

(18) *Excess utility costs.* Any loss of revenue or added costs or charges for providing utility services is not eligible.

(19) *National Guard*—(i) *Eligible*: Actual projects paid by the State not otherwise federally funded for work undertaken by the National Guard on a project basis, included salaries of National Guardsmen directly engaged in project work or supervision.

(ii) *Not eligible*: Use of National Guard for Public safety, or other security measures.

(20) *Cooperative agreements*—(i) *Eligible*: Costs for work performed under cooperative arrangements between State or local governments, but limited to those direct costs of the performing entity, which would be eligible if the applicant had performed the work.

(ii) *Not eligible*: Costs for work performed under arrangement between a State or political subdivision of a State and a Federal agency, except when approved in advance by the Regional Director.

(21) *Work performed by service, fraternal, and other similar organizations which do not normally contract their service for disaster relief*—(i) *Eligible*: Only out-of-pocket costs for equipment, materials, and supplies used or consumed in the performance of eligible work.

(ii) *Not eligible*: Wages or salaries of member personnel engaged in disaster relief activities.

(22) *Prison labor*—(i) *Eligible*: Out-of-pocket costs to an eligible applicant of prison labor performing eligible disaster work, limited to the amount paid the prisoners in accordance with rates established prior to the disaster, and the cost of transportation.

(ii) *Not eligible—. Costs of food, lodging, and guards.* Also, any costs for prison labor utilized by a contractor.

(23) *Private nonprofit organizations.* (i) Only catergorical grants may be approved by the Regional Director for such eligible grantees. No payment will be made for any work which was not within the scope of responsibility of the eligible private nonprofit organization prior to the major disaster.

(ii) *Such grants shall not*: (A) Be used to pay any part of the cost of facilities, supplies, or equipment which are to be used primarily for sectarian purposes; or

(B) Be used to pay costs to repair or replace: any facility, equipment, or supplies used primarily:

(*1*) For religious worship,

(*2*) For religious instruction, or

(*3*) In connection with any part of the program of a school or department of divinity.

(24) *Negligence.* No Federal reimbursement shall be made to any applicant for damages caused by its own negligence, by the negligence of any interested public or private organization or entity that is a direct grant recipient, or by any contractor.

(25) *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith are not eligible.

(26) *Governor's expenses.* The salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State of local government and are not eligible.

(27) *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such are county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are not eligible.

(28) *Legal fees required in the administration of the grant are eligible.* Legal services furnished by the Chief legal office of a State or local government of his or her staff solely for the purpose of discharging his general responsibilities as a legal officer are not eligible. Legal expenses for the prosecution of claims against the Federal Government are not eligible.

(29) *Other.* Any costs not allowable under OMB Circular A-87 are ineligible for FEMA reimbursement.

(b) *Work by applicant's own forces.* (1) In addition to the provisions of 44 CFR 205.76(a), this section provides criteria for eligibility of costs specifically applicable to work by the applicant's own forces, hereinafter referred to as force account.

(2) *Personnel.* (i) Gross salaries or wages (including overtime) of extra employees of the applicant or grantee are eligible when the employees are engaged in the performance of eligible work, but not to exceed the going wages paid locally for such work.

(ii) Gross salaries or wages (including overtime) of regular employees of the applicant or grantee are eligible for reimbursement, but not to exceed the going wages paid locally for such work except the following types of ineligible costs:

(A) Regular salaries or wages of regularly employed policemen and firemen and of other regular employees whose duties do not change because of the disaster. Examples are levee patrollers, pumping plant operators, and building inspectors.

(B) Regular salaries of supervisory personnel other than working foremen engage primarily-and-continuously in field supervision of eligible work.

(C) All payroll costs above each employee's gross pay.

(3) *Equipment.* (i) The FEMA Schedule of Equipment Rates, or an alternative Schedule of Equipment Rates approved by the Associate Director, is applicable to all reimbursements for equipment that is publicly-owned or owned by other grantees.

(ii) For vehicles or equipment utilized by police, firemen, and other employees whose duties do not change because of the major disaster or emergency, only disaster-related actual costs in excess of average costs for the same period of time for the previous three years, based on auditable records are eligible.

(iii) For permanently installed fixed equipment, such as pumping stations, only disaster-related actual costs in excess of the average costs for this same period of time for the previous three years, based on auditable records are eligible.

(c) *Contract work*—(1) *Eligible*: Reasonable costs for work performed by private contractors on eligible projects contracted for in accordance with State or local statutes.

(2) *Not eligible*: Costs incurred under the following types of contracts unless the Regional Director determines, on a case-by-case basis, that reimbursement of reasonable actual costs of eligible work is in the best insterests of the government:

(i) Cost-plus-percentage-of-cost contracts.

(ii) Contracts containing a provision which makes payment for eligible work contingent upon reimbursement under the Act.

(iii) Contracts with any contractor included on any FEMA listing of debarred contractors.

(d) *Emergency work*—(1) *General.* In addition to provisions of 44 CFR 205.76, (a), (b) and (c), these specific criteria apply to emergency work under the Act.

(2) *Engineering and design.* For emergency work such services are usually not necessary and Federal reimbursement may not be justified. The provisions of 44 CFR 205.76(e)(2) are also applicable to any engineering or design services related to emergency work.

(3) *Debris removal.* No Federal reimbursement will be made to an applicant for its reimbursement of an individual or private organization for the cost of removing debris from his/her own property except those public entities and private nonprofit organizations eligible under section 402(b) of the Act.

(4) *Snow removal.* (i) FEMA reimbursement will be made to eligible applicants (see Part 44 CFR 205.72(f)(1)) in an amount not to exceed one half of the eligible costs incurred for eligible work performed in designated areas during the established incidence period, except in those unusual cases when the applicant and the State are financially unable to cost share as determined by the FEMA Associate Director.

(ii) Any applicant which requested direct Federal assistance for emergency snow removal shall reimburse FEMA for one half of the eligible costs incurred for eligible work performed in designated areas during the established incidence periods including any overhead or administrative expenses paid by FEMA to the Federal agency performing the mission assignment, except in those unusual cases as indicated in § 205.76(d)(4)(i) of this part.

(iii) The following types of costs may be eligible when approved by the Regional Director:

(A) Costs of equipment operations to perform eligible emergency snow removal. Only those types of equipment are eligible that are listed in the applicable Schedule of Rates approved by FEMA.

(B) Costs to remove stalled or abandoned vehicles and other obstructions when necessary to accomplish eligible emergency snow removal by equipment operations.

(C) Costs of mobilization and demobilization of equipment, actually used to perform eligible work, involving transportation less than 300 miles, one way.

(iv) The following types of costs of emergency snow removal are not eligible:

(A) Costs of hand labor.

(B) Costs of salt, sand, and other such antislip measures. These are normal maintenance costs which do not necessarily increase with the depth of the snowfall.

(C) Cost of transportation in excess of 300 miles for one way for mobilization or demobilization of equipment.

(5) *Emergency pumping.* Reimbursement for emergency pumping shall terminate promptly after the river or stream has crested, except for removal of trapped water posing an immediate threat to public health and safety.

(6) *Access to water control facilities.* Emergency repairs to roadways along the top of a water control facility shall not exceed that required to provide access for emergency work or that which existed prior to this major disaster or emergency.

(7) *Vector control.* Only disaster-related actual costs in excess of the average cost for the same period of time during the previous three years are eligible when vector control is approved in the public interest.

(e) *Permanent work*—(1) *General.* In addition to provisions of 44 CFR 205.76 (a), (b), and (c), these specific criteria apply to permanent work under section 402 of the Act.

(2) *Engineering and design.* Reimbursement for eligible engineering, planning, design, supervision, or inspection services is based upon actual direct costs but shall not exceed the amount approved on the project application, or on a supplemental project application. The Regional Director may approve special services, such as engineering, surveys, soil investigations, resident engineers, and additional construction inspection when justified.

(3) *Feasibility studies.* Feasibility studies may be reimbursable under the Act when approved in advance by the Regional Director. Costs for feasibility studies primarily concerning alternate facilities, betterments, or post-disaster programs or any project approved for flexible funding are not eligible for reimbursement under the provisions of the Act.

(4) *Environmental review.* Costs incurred by an applicant to perform an environmental review and assessment are not eligible without prior approval by the Regional Director. Refer also to 44 CFR Part 10.

(5) *Disaster proofing.* The eligible costs of disaster proofing are limited to minor measures to make the affected features of a facility or structure disaster-resistant. Eligible costs of disaster proofing shall not exceed a small percentage of otherwise eligible costs of restorative work being disaster proofed, unless approved by the Associate Director under unusual circumstances on a case-by-case basis.

(6) *Relocations.* When the Regional Director has approved replacement of a facility at a new location under section 402 of the Act, the costs of acquiring the site plus providing to the site road access, utilities, and communication lines are the owner's responsibility and are not eligible. The costs of replacing the facility at the new approved location, otherwise eligible under the Act, are reimbursable.

(7) *Warranties.* Additional costs to provide warranty or guarantee of any repaired or replacement items or facilities are not eligible for Federal reimbursement. However, after applying for relief from the contractor, manufacturer, or supplier, the applicant or grantee may appeal to the Regional Director for any grant assistance that he can justify as disaster related.

(8) *Projects under construction.* (i) Only categorical grants may be approved for those facilities under construction when damaged or destroyed by a major disaster. Federal reimbursement shall not exceed the net eligible costs to the applicant, to a private nonprofit organization or entity, or to the contractors in restoring a facility to substantially the same condition as existed prior to the major disaster.

(ii) In addition to other provisions of 44 CFR 205.76, the following are not eligible:

(A) Repair or replacement of the site.

(B) Repair or replacement of mobile construction equipment.

(C) Project operation and maintenance.

(D) Idle construction equipment ownership expense or loss of revenue because of damages to construction equipment or for other reasons.

(E) Contractors' administrative or overhead costs not directly related to eligible work including computer costs.

(F) Costs covered by insurance settlements or salvage, including reimbursement which might be received from any other private, State or local government, or Federal agency.

(G) Contractor's profit in those instances where the contractor is the beneficiary of the Federal assistance.

(H) Losses resulting from delays in completion of the work such as contract penalties or loss of revenue.

(I) Costs of disaster proofing.

(9) *Timber removal*—(i) *Eligible costs*: (A) Reimbursement for eligible expenses actually incurred in the removal of damaged timber subject to verification by inspection and audit.

(B) Costs of repair or construction of temporary roads approved by the Regional Director as necessary for access to damaged timber for removal.

(ii) *Ineligible costs*: (A) Estimated salvage value of timber destroyed by burning or otherwise by the claimant in lieu of practicable salvage operations.

(B) Costs of timber removal for which the Regional Director determines salvage or insurance recoveries by the claimant are applicable.

(C) Debris removal other than provided in approved work practices for primary purpose of timber removal.

(iii) *Maximum payment*: Maximum payment for completed approved work practices will be based on the following:

(A) Construction of approved temporary access roads for salvage of damaged timber. 100% of eligible costs not to exceed $60.00 per thousand linear feet.

(B) *Drum chopping*: 100% of eligible cost not to exceed $100.00 per acre.

(C) *Prescribed burning*: 100% of eligible cost not to exceed $5.00 per acre.

(D) Raking, windrowing and burning: 100% of eligible cost not to exceed $140.00 per acre.

Any payment will be minus any residual salvage value, insurance recoveries or other cost-share payments related to timber removal.

[45 FR 53957, Aug. 13, 1980, as amended at 45 FR 64585, Sept. 30, 1980; 46 FR 32584, June 24, 1981; 47 FR 52178, Nov. 19, 1982; 48 FR 44544, Sept. 29, 1983]

Subpart F—Community Disaster Loans

SOURCE: 53 FR 12682, Apr. 18, 1988, unless otherwise noted.

§ 205.90 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 414 of the Act.

§ 205.91 Loan program.

(a) *General.* The Associate Director, State and Local Programs and Support (the Associate Director) may make a Community Disaster Loan to any local government which has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency and which demonstrates a need for Federal financial assistance in order to perform its governmental functions.

(b) *Amount of loan.* The amount of the loan is based on need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs. The term "fiscal year" as used in this subpart means the local government's fiscal year.

(c) *Interest rate.* The interest rate is the rate determined by the Secretary of the Treasury in effect on the date that the Promissory Note is executed. This Treasury rate takes into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity adjusted to the nearest ⅛ percent. The interest rate used shall be the Treasury rate for 5 year maturities in effect for the month the Promissory Note is executed by the Associate Director.

(d) *Time limitation.* The Associate Director may approve a loan in either the fiscal year in which the disaster occurred or the fiscal year immediately following that year. Only one loan may be approved under section 414(a) for any local government as the result of a single disaster.

(e) *Term of loan.* The term of the loan is 5 years, unless otherwise extended by the Associate Director. The Associate Director may consider requests for an extensions of loans based on the local government's financial condition. The total term of any loan under section 414(a) normally may not exceed 10 years from the date the Promissory Note was executed. However, when extenuating circumstances exist and the Community Disaster Loan recipient demonstrates an inability to repay the loan within the initial 10 years, but agrees to repay such loan over an extended period of time, additional time may be provided for loan repayment. See § 205.97(c) of this part.

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance capital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Act.

(g) *Cancellation.* The Associate Director shall cancel repayment of all or part of a Community Disaster Loan to the extent that he/she determines that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

(h) Any community disaster loans including cancellations made under this subpart shall not reduce or otherwise affect any commitments, grants, or other assistance under the Act or these regulations.

§ 205.92 Responsibilities.

(a) The local government shall submit the financial information required by FEMA in the application for a Community Disaster Loan and in the application for loan cancellation, if submitted, comply with the assurances on the application, the terms and conditions of the Promissory Note, and these regulations. The local government shall send all loan application, loan administration, loan cancellation, and loan settlement correspondence through the Governor's Authorized Representative and the FEMA Regional Office to the FEMA Associate Director.

(b) The Governor's Authorized Representative shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the FEMA-State Agreement for the major disaster or emergency. States are encouraged to take appropriate pre-disaster action to resolve any existing State impediments which would preclude a local government from incurring the increased indebtedness associated with a loan in order to avoid protracted delays in processing loan application requests in major disasters or emergencies.

(c) The Regional Director or designee shall review each loan application or loan cancellation request received from a local government to ensure that it contains the required documents and transmit the application to the Associate Director. He/she may submit appropriate recommendations to the Associate Director.

(d) The Associate Director, or a designee, shall execute a Promissory Note with the local government, and the Office of Disaster Assistance Programs in Headquarters, FEMA, shall administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Associate Director or designee shall approve or disapprove each loan request, taking into consideration the information provided in the local government's request and the recommendations of the Governor's Authorized Representative and the Regional Director. The Associate Director or designee shall approve or disapprove a request for loan cancellation in accordance with the criteria for cancellation in these regulations.

(f) The Comptroller shall establish and maintain a financial account for each outstanding loan and disburse funds against the Promissory Note.

§ 205.93 Eligibility criteria.

(a) *Local government.* (1) The local government must be located within the area designated by the Associate Director as eligible for assistance under a major disaster or emergency declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan.

(2) Factors considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as result of a major disaster or emergency, a demonstrated need for financial assistance in order to perform its governmental functions, the maintenance of an annual operating budget, and the responsibility to provide essential municipal operating services to the community. Eligibility for other assistance under the Act does not, by itself, establish entitlement to such a loan.

(b) *Loan eligibility*—(1) *General.* To be eligible, the local government must show that it may suffer or has suffered a substantial loss of tax and other revenues as a result of a major disaster or emergency and must demonstrate a need for financial assistance in order to perform its governmental functions. Loan eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the application.

(2) Substantial loss of tax and other revenues. The fiscal year of the disaster or the succeeding fiscal year is the base period for determining whether a local government may suffer or has suffered a substantial loss of revenue. Guidelines used in determining whether a local government has or may suffer a substantial loss of tax and other revenue include the following disaster-related factors:

(i) Whether the disaster caused a large enough reduction in cash receipts from normal revenue sources, excluding borrowing, which affects significantly and adversely the level and/or categories of essential municipal services provided prior to the disaster.

(ii) Whether the disaster caused a revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

(3) Demonstrated need for financial assistance. The local government must demonstrate a need for financial assistance in order to perform its governmental functions. The guidelines used in making this determination include the following:

(i) Whether there is sufficient funds to meet current fiscal year operating requirement;

(ii) Whether there is availability of cash or other liquid assets from the prior fiscal year;

(iii) Current financial condition considering projected expenditures for governmental services and availability of other financial resources;

(iv) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(v) Debt ratio (relationship of annual receipts to debt service);

(vi) Ability to obtain financial assistance or needed revenue from State and other Federal agencies for direct program expenditures;

(vii) Displacement of revenue-producing business due to property destruction;

(viii) Necessity to reduce or eliminate essential municipal services; and

(ix) Danger of municipal insolvency.

§ 205.94 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the Governor's Authorized Representative. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the three succeeding fiscal years. The loan application shall be prepared by the affected local government and be approved by the Governor's Authorized Representative. FEMA has determined that a local government, in applying for a loan as a result of having suffered a substantial loss of tax and other revenue as a result of a major disaster, is not required to first seek credit elsewhere. (See § 205.97(c))

(2) The State exercises administrative authority over the local government's application. The State's review should include a determination that the applicant is legally qualified, under State law, to assume the proposed debt, and may include an overall review for accuracy for the submission. The Governor's Authorized Representative may request the Regional Director to waive the requirement for a State review if an otherwise eligible applicant is not subject to State administration authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the local government's annual operating budget (§ 105.94(b)(2) of this part) and shall include a Summary of Revenue Loss and Unreimbursed Disaster-Related Expenses, a Statement of the Applicant's Operating Results—Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application.

(i) Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the three fiscal years immediately prior to the fiscal year of the disaster and the applicant's most recent financial statement must accompany the application. The local government's financial reports to be submitted are those annual (or interim) consolidated and/or individual official annual financial presentations for the General Fund and all other funds maintained by the local government.

(ii) Each application for a Community Disaster Loan must also include:

(A) A statement by the local government identifying each fund (i.e. General Fund, etc.) which is included as its Annual Operating Budget, and

(B) A copy of the pertinent State statutes, ordinance, or regulations which prescribe the local government's system of budgeting, accounting and financial reporting, including a description of each fund account.

(2) *Operating budget.* For loan application purposes, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures. For loan cancellation purposes, FEMA interprets the term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(3) *Operating budget increases.* Budget increases due to increases in the level of, or additions to, municipal services not rendered at the of the disaster or not directly related to the disaster shall be identified.

(4) Revenue and assessment information. the applicant shall provide information concerning its method of tax assessment including assessment dates and the dates payments are due. Tax revenues assessed but not collected, or other revenues which the local government chooses to forgive, stay, or otherwise not exercise the right to collect, are not a legitimate revenue loss for purposes of evaluating the loan application.

(5) *Estimated disaster-related expense.* Unreimbursed disaster-related expenses of a municipal operation character should be estimated. These are discussed in § 205.96(b) of this part.

(c) *Federal review.* (1) The Associate Director or designee shall approve a community disaster loan to the extent it is determined that the local government has suffered a substantial loss of tax and other revenues and demonstrates a need for financial assistance to perform its governmental function as the result of the disaster.

(2) *Resubmission of application.* If a loan application is disapproved, in whole or in part, by the Associate Director because of inadequacy of information, a revised application may be resubmitted by the local government within sixty days of the date of the disapproval. Decision by the Associate Director on the resubmission is final.

(d) *Community Disaster Loan.* (1) The loan shall not exceed the lesser of:

(i) The amount of projected revenue loss plus the projected unreimbursed disaster-related expenses of a municipal operating character for the fiscal year of the major disaster and the subsequent three fiscal years or

(ii) 25 percent of the local government's annual operating budget for the fiscal year in which the disaster occurred.

(2) *Promissory note.* (i) Upon approval of the loan by the Associate Director or designee, he or she, or a designated Loan Officer will execute a Promissory Note with the applicant. The Note must be co-signed by the State (See § 205.94(d)(2)(ii)). The applicant should indicate its funding requirements on the Schedule of Loan Increments on the note.

(ii) If the State cannot legally cosign the promissory note, the local government must pledge collateral security, acceptable to the Associate Director, to cover the principal amount of the note. The pledge should be in the form of a resolution by the local governing body identifying the collateral security.

(Approved by the Office of Management and Budget under control number 3067-0034)

§ 205.95 Loan administration.

(a) *Funding.* (1) FEMA will disburse funds to the local government when requested, generally in accordance with the Schedule of Loan Increments in the Promissory Note. As funds are disbursed, interest will accrue against each disbursement.

(2) When each incremental disbursement is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in determining whether the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections. Desired adjustments in the disbursement schedule shall be submitted in writing at least 10 days prior to the proposed disbursement date in order to ensure timely receipt of the funds. A sinking fund should be established to amortize the debt.

(b) *Financial management.* (1) Each local government with an approved Community Disaster Loan shall establish necessary accounting records, consistent with local government's financial management system, to account for loan funds received and disbursed and to provide an audit trail.

(2) FEMA auditors, State auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall for the purpose of audits and examination have access to any books, documents, papers, and records that pertain to Federal funds, equipments, and supplies received under these regulations.

(c) *Loan servicing.* (1) The applicant annually shall submit to FEMA copies of its annual financial reports (operating statements, balance sheets, etc.) for the fiscal year of the major disaster, and for each of the three subsequent fiscal years.

(2) The Headquarters, FEMA Office of Disaster Assistance Programs, will review the loan periodically. The purpose of the reevaluation is to determine whether projected revenue

losses, disaster-related expenses, operating budgets, and other factors have changed sufficiently to warrant adjustment of the scheduled disbursement of the loan proceeds.

(3) The Headquarters, FEMA Office of Disaster Assistance Programs, shall provide each loan recipient with a loan status report on a quarterly basis. The recipient will notify FEMA of any changes of the responsible municipal official who executed the Promissory Note.

(d) *Inactive loans.* If no funds have been disbursed from the Treasury, and if the local government does not anticipate a need for such funds, the note may be cancelled at any time upon a written request through the State and Regional Office to FEMA. However, since only one loan may be approved, cancellation precludes submission of a second loan application request by the same local government for the same disaster.

§ 205.96 Loan cancellation.

(a) *Policies.* (1) FEMA shall cancel repayment of all or any part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full three fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget of the local government, including additional unreimbursed disaster-related expenses for a municipal operating character. For loan cancellation purposes, FEMA interprets that term "operating budget" to mean actual revenues and expenditures of the local government as published in the official financial statements of the local government.

(2) If the tax and other revenues rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster is reduced during the three fiscal years subsequent to the major disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster of computing revenues received. This may result in decreasing the potential for loan cancellations.

(3) If the local government's fiscal year is changed during the "full three year period following the disaster" the actual period will be modified so that the required financial data submitted covers an inclusive 36-month period.

(4) If the local government transfers funds from its operating funds accounts to its capital funds account, utilizes operating funds for other than routine maintenance purposes, or significantly increases expenditures not disaster related, except increase due to inflation, the annual operating budget or operating statement expenditures will be reduce accordingly for purposes of evaluating any request for loan cancellation.

(5) It is not the purpose of this loan program to underwrite pre-disaster budget or actual deficits of the local government. Consequently, such deficits carried forward will reduce any amounts otherwise eligible for loan cancellation.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purpose of this loan, unreimbursed expenses of a municipal operating character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and other expenses normally budgeted for the general fund, as defined by the Municipal Finance Officers Association.

(2) Disaster-related expenses do not include expenditures associated with debt service, any major repairs, rebuilding, replacement or reconstruction of public facilities or other capital projects, intragovernmental services, special assessments, and trust and agency fund operations. Disaster expenses which are eligible for reimbursement under project applications or other Federal programs are not eligible for loan cancellation.

(3) Each applicant shall maintain records including documentation necessary to identify expenditures for unreimbursed disaster related expenses. Examples of such expenses include but are not limited to:

(i) Interest paid on money borrowed to pay amounts FEMA does not advance toward completion of approved Project Applications.

(ii) Unreimbursed costs to local governments for providing usable sites with utilities for mobile homes used to meet disaster temporary housing requirements.

(iii) Unreimbursed costs required for police and fire protection and other community services for mobile home parks established as the result of or for use following a disaster.

(iv) The cost to the applicant of flood insurance required under Pub. L. 93-234 and other hazard insurance required under section 314, Pub L. 93-288, as a condition of Federal disaster assistance for the disaster under which the loan is authorized.

(4) The following expenses are not considered to be disaster-related for Community Disaster Loan purposes.

(i) The local government's share for assistance provided under the Act including flexible funding under section 402(f) of the Act.

(ii) Improvements related to the repair or restoration of disaster public facilities approved on Project Applications.

(iii) Otherwise eligible costs for which no Federal reimbursement is requested as a part of the applicant's disaster response commitment, or cost sharing as specified in the FEMA-State Agreement for the disaster.

(iv) Expenses incurred by the local government which are reimbursed on the applicant's project application.

(c) *Cancellation application.* A local government which has drawn loan funds from the Treasury may request cancellation of the principal and related interest by submitting an Application for Loan Cancellation through the Governor's Authorized Representative to the Regional Director prior to the expiration date of the loan.

(1) Financial information submitted with the application shall include the following:

(i) Annual Operating Budgets for the fiscal year of the disaster and the three subsequent fiscal years;

(ii) Annual Financial Reports (Revenue and Expense and Balance Sheet) for each of the above fiscal years. Such financial records must include copies of the local government's annual financial reports, including operating statements balance sheets and related consolidated and individual presentations for each fund account. In addition, the local government must include an explanatory statement when figures in the Application for Loan Cancellation form differ from those in the supporting financial reports.

(iii) The following additional information concerning annual real estate property taxes pertaining to the community for each of the above fiscal years:

(A) The market value of the tax base (dollars),

(B) The assessment ratio (percent),

(C) The assessed valuation (dollars),

(D) The tax levy rate (mils),

(E) Taxes levied and collected (dollars).

(iv) Audit reports for each of the above fiscal years certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants. The report should not include recommendations concerning loan cancellation or repayment.

(v) Other financial information specified in the Application for Loan Cancellation.

(2) *Narrative justification.* The application may include a narrative presentation to amplify the financial material accompanying the application and to present any extenuating circumstances which the local government wants the Associate Director to consider in rendering a decision on the cancellation request.

(d) *Determination.* (1) If, based on a review of the Application for Loan Cancellation and FEMA audit, when determined necessary, the Associate Director determines that all or part of the Community Disaster Loan funds should be cancelled, the principal amount which is cancelled will become a grant, and the related interest will be forgiven. The Associate Director's determination concerning loan cancellation will specify that any uncancelled principal and related interest must be repaid immediately and that if immediate repayment will constitute a financial hardship, the local government must submit for FEMA review and approval, a repayment schedule for settling the indebtedness on timely basis. Such repayments must be made to the Treasurer of the United States and be sent to FEMA, Attention: Office of the Comptroller.

(2) A loan or cancellation of a loan does not reduce or affect other disaster-related grants or other disaster assistance. However, no cancellation may be made that would result in a duplication of benefits to the applicant.

(3) The uncancelled portion of the loan must be repaid in accordance with § 205.97 of this part.

(4) *Appeals.* If an Application for Loan Cancellation is disapproved, in whole or in part, by the Associate Director or designee, the local government may submit any additional information in support of the application within sixty days of the date of disapproval. The decision by the Associate Director or designee on the submission is final.

(Approval by the Office of Management and Budget under control number 3067-0026)

§ 205.97 Loan repayment.

(a) *Prepayments.* The local government may make prepayments against loan at any time without any prepayment penalty.

(b) *Repayment.* To the extent not otherwise cancelled, Community Disaster Loan funds become due and payable in accordance with the terms and conditions of the promissory note. The note shall include the following provisions:

(1) The term of a loan made under this program is five years, unless extended by the Associate Director. Interest will accrue on outstanding cash from the actual date of its disbursement by the Treasury.

(2) The interest amount due will be computed separately for each Treasury disbursement as follows: $I = P \times R \times T$, where I=the amount of simple interest, P=the principal amount disbursed; R=the interest rate of the loan; and, T=the outstanding term in years from the date of disbursement to date of repayment, with periods less than one year computed on the basis of 365/year. If any portion of the loan is cancelled, the interest amount due will be computed on the remaining principal with the shortest outstanding term.

(3) Each payment made against the loan will be applied first to the interest computed to the date of the payment, and then to the principal. Prepayments of scheduled installments, or any portion thereof, may be made at any time and shall be applied to the installments last to become due under the loan and shall not affect the obligation of the borrower to pay the remaining installments.

(4) The Associate Director may defer payments of principal and interest until FEMA makes its final determination with respect to any Application for Loan Cancellation which the borrower may submit. However, interest will continue to accrue.

(5) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand.

(6) In the event of default on this note by the borrower, the FEMA claims collection officer will take action to recover the outstanding principal plus related interest under Federal Debt Collection authorities, including administrative offset against other Federal funds due the borrower and/or referral to the Department of Justice for judicial enforcement and collection.

(c) In unusual circumstances involving financial hardship, the local government may request an additional period of time to repay the indebtedness. Such request may be approved by the Associate Director subject to the following conditions:

(1) The local government must submit documented evidence that it has applied for the same credit elsewhere and that such credit is not available at a rate equivalent to the current Treasury rate.

(2) The principal amount shall be the original uncancelled principal plus related interest.

(3) The interest rate shall be the Treasury rate in effect at the time the

new Promissory Note is executed but in no case less than the original interest rate.

(4) The term of the new Promissory Note shall be for the settlement period requested by the local government but not greater than ten years from the date the new note is executed.

Subpart G—Fire Suppression Assistance

SOURCE: 50 FR 50619, Dec. 11, 1985, unless otherwise noted.

§ 205.100 General.

When the Associate Director determines that a fire or fires threaten such destruction as would constitute a major disaster, assistance may be authorized, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland.

§ 205.101 FEMA-State agreements.

Federal assistance under section 417 of the Act is provided in accordance with a continuing FEMA-State Agreement for Fire Suppression Assistance (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions, consistent with the provisions of applicable laws, Executive orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute requests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed as required to update the continuing Agreement.

§ 205.102 Request for assistance.

When a Governor determines that fire suppression assistance is warranted, a request for assistance may be initiated. Such request shall specify in detail the factors supporting the request for assistance. In order that all actions in processing a State request are executed as rapidly as possible, the State may submit a telephone request to the Regional Director, promptly followed by a confirming telegram or letter.

(Approved by the Office of Management and Budget under the Control Number 3067-0066)

§ 205.103 Providing assistance.

Following the Associate Director's decision on the State request, the Regional Director will notify the Governor and the Federal firefighting agency involved. The Regional Director may request assistance from Federal agencies if requested by the State. For each fire or fire situation, the State shall prepare a separate Fire Project Application based on Federal Damage Survey Reports and submit it to the Regional Director for approval.

§ 205.104 Cost eligibility.

(a) To be eligible under a FEMA grant, costs must meet the following general criteria:

(1) Be necessary and reasonable for proper and efficient administration of the approved work, be allocable thereto under these regulations, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

(2) Be authorized or not prohibited under State or local laws or regulations.

(3) Conform to any limitations or exclusions set forth in these regulations, Federal laws, or other governing limitations as to types or amounts of cost items.

(4) Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

(5) Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

(6) Not be allocable to or included as a cost of any other federally financed program.

(7) Be net of all applicable credits which offset or reduce otherwise eligible cost, including discounts, insurance recoveries, and salvage.

(b) Eligible State costs are reimbursed in accordance with the terms and provisions of the Agreement. Only certain costs incurred in fire suppression operations are eligible for reimbursement. The following paragraphs describe those specific items which are clearly eligible or clearly ineligible.

(1) Eligible costs of the State consist of the following costs reasonably and directly related to fire suppression:

(i) All compensation for employees, except as noted under paragraph (b)(2)(i) of this section, directly engaged in authorized suppression activities. Included are field support personnel, such as cooks, guards, timekeepers, and supply personnel.

(ii) Travel and per diem costs for employees directly engaged in fire suppression activities.

(iii) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(iv) Cost for use of publicly owned equipment used on eligible fire suppression work based on reasonable State equipment rates.

(v) Cost of use of privately owned equipment based on the rental rate: *Provided* such costs are comparable to the going rate for the same or similar equipment in the locality, as determined by the Regional Director.

(vi) Cost to the State for use of U.S. Government-owned equipment based on reasonable costs as billed by the Federal agency and paid by the State. Only direct costs for use of Federal Excess Personal Property (FEPP) vehicles and equipment on loan to State and local cooperators, can be paid.

(vii) Cost of firefighting tools, materials, and supplies expended or lost, to the extent not covered by reasonable insurance.

(viii) Repair and reconditioning costs of tools and equipment used in eligible fire suppression activities.

(ix) Replacement value of equipment lost in fire suppression, to the extent not covered by reasonable insurance.

(x) Costs for personal comfort and safety items normally provided by the State under field conditions for firefighter health and safety.

(xi) Mobilization and demobilization costs directly relating to the Federal fire suppression assistance approved by the Associate Director.

(xii) Eligible costs of local governmental firefighting organizations which are reimbursed by the State pursuant to an existing cooperative mutual aid agreement, in suppressing and approved incident fire.

(xiii) State costs for suppressing fires on Federal land in cases in which the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis. This provision is an exception to normal FEMA policy under the Disaster Relief Act of 1974 and is intended to accommodate only those rare instances that involve State fire suppression of section 417 incident fires involving co-mingled Federal/State and privately owned forest or grassland.

(2) Costs that are ineligible for reimbursement are are:

(1) Any clerical or overhead costs other then field administration and supervision [see paragraph (b)(1)(i) of this section]. Ineligible costs include administrative employees at home stations (and at higher organizational levels) of the fire fighting force who provide support and backup to the "field" (those at the fire scene).

(ii) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

(iii) Any costs not incurred during the incident period as determined by the Regional Director other than reasonable and directly related mobilization and demobilization costs.

(iv) State costs for suppressing a fire on co-mingled Federal land where such costs are reimbursable to the State by a Federal agency under another statute (see 44 CFR Part 151).

(3) In those instances in which assistance under section 417 of the Act is provided in conjunction with existing Interstate Forest Fire Protection Compacts, eligible costs are reimbursed in accordance with eligibility critria established in this section.

[50 FR 50619, Dec. 11, 1985, as amended at 51 FR 34606, Sept. 30, 1986]

§ 205.105 Grant administration.

(a) Project administration shall be in accordance with applicable portions of

Subpart H, 44 CFR Part 205. All grants for fire suppression assistance shall be approved as categorical grants.

(b) Each claim for reimbursement shall be supported by a program review and a certification by the State that the assistance and costs claimed are eligible under these regulations.

(c) In those instances in which reimbursement includes State fire suppression assistance on commingled State and Federal lands (§ 205.104(b)(1)(xiii)), the Regional Director shall coordinate with other Federal programs to preclude any duplication of payments. See 44 CFR Part 151.

(d) Audits shall be in accordance with the Single Audit Act of 1984, Pub. L. 98-502. See Subpart H of this part including Appendix A to Subpart H which incorporates OMB Circular A-128.

(e) Payment is made to the State for its actual eligible costs, subject to verification, as necessary, by Federal review, inspection and audit.

(f) A State may appeal a determination by the Regional Director on any action related to Federal assistance for fire suppression. Appeal procedures are contained in 44 CFR 205.120.

Subpart H—Project Administration

SOURCE: 45 FR 45863, July 7, 1980, unless otherwise noted.

§ 205.110 General.

This subpart provides guidance for administration of Federal assistance for State and local governments, and qualifying private nonprofit institutions under Pub. L. 93-288, as amended. The basic policies and procedures are provided for: (a) Federal grants to eligible applicants, including the notice of interest, damage survey report, project application, advance of funds, inspection, audit, and final payment; and (b) direct Federal assistance by a Federal agency as the result of a mission assignment. The requirements of OMB Circular A-102, Revised, are applicable and have been incorporated either directly or by appropriate cross reference.

§ 205.111 Definitions.

(a) "Advance of funds" means a sum of money provided to a State, local government, or other Federal agency prior to audit and or final settlement of its claim.

(b) "Applicant" means the State, local government, or eligible private nonprofit facility submitting a project application or request for direct Federal assistance under the Act or on whose behalf the Governor's Authorized Representative takes such action.

(c) [Reserved]

(d) "Bid guarantee" means a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(e) "Bill for collection" means a request issued to an applicant by FEMA to collect excess funds that were over-advanced or paid in error to the applicant.

(f) "Damage Survey Report (DSR)" means a report of damages or requirements caused by a major disaster or emergency including location, description and estimate of required work.

(g) "Emergency work" means that work which must be done immediately to save lives and to protect property and public health and safety, or to avert or lessen the threat of a major disaster.

(h) "FEMA" means the Federal Emergency Management Agency.

(i) "Force account" means an applicant's own labor forces consisting of its regular and extra employees.

(j) "Line item" means a DSR under one category of work attached to a project application.

(k) "Notice of Interest" means an identification of each potential applicant and the categories of disaster requirements each has identified which may be eligible for Federal disaster assistance.

(l) "Offset" means a collection procedure whereby FEMA withholds funds due an applicant or the State in an amount to satisfy an uncollectible debt owed by the applicant on a Bill for collection.

(m) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(n) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(o) "Permanent work" means the restorative work that must be done, through repairs or replacement, to restore an eligible facility on the basis of its predisaster design and in conformity with current applicable codes, specifications, and standards.

(p) "Public assistance" means the Federal financial assistance provided to State and local governments or to eligible private nonprofit organizations for disaster-related requirements.

(q) "Standards" means codes, specifications, and standards which were in general use and locally enforced at the time of the major disaster, plus those additional standards authorized as deviations or prescribed by the Associate Director in accordance with these regulations.

[45 FR 45863, July 7, 1980, as amended at 46 FR 45138, Sept. 10, 1981]

§ 205.112 Implementation of OMB Circular A-102 and A-128.

(a) [Reserved]

(b) *Bonding and insurance.* A State or local unit of government receiving a grant under the Act for construction or facility improvement which requires contracting shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding $100,000. For contracts exceeding $100,000, the Regional Director may accept the bonding policy and requirements of the grantee provided that the Regional Director has made a determination that the Government's interest is adequately protected. If such determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price.

(2) A performance bond on the part of the contractor for 100 percent of the contract price.

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

(c) *Property management standards.* Uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds by State and local governments are applicable as stated in Attachment N, OMB Circular A-102, Revised.

(d) *Procurement standards.* State and local governments are required to apply uniform standards, as stated in Attachment O, OMB Circular A-102 Revised, in establishing procedures for the procurement of supplies, equipment, construction, and other services with Pub. L. 93-288 grant funds. Additionally, the following standards are required:

(1) *State and local statutes*: The State, local government, or other organization issuing a contract shall assure that procurement of work and services authorized under project applications complies with provisions of the Act, and, unless waived by the Governor's proclamation of an emergency, with State or local statutes, regulations, and ordinances not in conflict with Federal policies or procedures.

(2) *Contingent payment*: Contracts entered into by an applicant under the Act or the regulations will not contain a provision which makes the payment for such work contingent upon reimbursement under this Act.

(3) The cost-plus-percentage-of-cost and percentage-of construction-cost method of contracting shall not be used. Any CPPC contracts entered into by applicants in violation of this prohibition will be reviewed carefully by the Regional Director or his designee and rejected or reimbursed on a reasonable cost basis at his discretion, depending on the policy considerations involved in the particular case.

(4) *Competitive bidding*: Contracting for construction work shall be based on competitive bids wherever possible. Any negotiations shall be in accordance with Attachment O, OMB Circular A-102, Revised.

(5) *Debarred contractors*: The applicant may not enter into any contract with parties whose names appear on the FEMA Consolidated List of Debarred, Suspended and Ineligible Contractors. The Regional Director may retroactively approve the use of debarred contractors already under contract on a case-by-case basis if he determines such approval to be in the public interest.

(6) *Use of local firms and individuals*: In the expenditure of funds for eligible disaster assistance activity which may be carried out by contract with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals who reside or do business primarily in the area affected by such major disaster. Contracting procedures should be designed to give local contractors the opportunity to participate in maximum free and open competition with other contractors. Local preference should be mentioned in the invitations for bids and requests for proposals and also included in the provisions of the contract. Contracting officers may assure the use of local firms and individuals in various ways, such as:

(i) Advertising in the local disaster area.

(ii) Including local contractors in negotiations.

(iii) Subdividing some large contracts down into smaller sized contracts.

(iv) Stressing that a contractor shall give first priority to utilizing resources in the disaster area when procuring supplies and equipment, awarding subcontracts, and employing workmen.

(v) When it is necessary for competitive negotiation, the applicant may permit a local contractor to revise his proposal to meet a lower offering received from a non-local contractor if the original proposal from the local contractor does not exceed 130 percent of the lower non-local proposal.

(vi) When a low bid is received from a non-local contractor under competitive bidding procedures, the applicant may offer a local contractor the opportunity of accepting the work at the low bid amount, provided that the original bid from the local contractor does not exceed 130 percent of the low bid, and a "local preference" clause was included in the bid advertisement.

(e) Governmental recipients of assistance under Pub. L. 93-288 shall comply with OMB Circular A-128, including any amendments which are published in the FEDERAL REGISTER by OMB. A copy of OMB Circular A-128 is attached at Appendix A to Subpart H.

[45 FR 45863, July 7, 1980, as amended at 50 FR 32064, Aug. 8, 1985]

§ 205.113 Federal grant assistance.

(a) *General.* Federal grant assistance is provided on the basis of a project application submitted by or on behalf of an applicant and approved by the Governor's Authorized Representative and the Regional Director. When the Regional Director approves a project application, Federal funds are obligated and the approval is final unless appealed in accordance with 44 CFR 205.120. When assistance is authorized under the Act and a State is unable to assume the responsibilities prescribed in these regulations, an Indian tribe or authorized tribal organization acting as a local government may submit a project application directly to the Regional Director who may provide Federal assistance to such applicant without State participation.

(b) *Types of Federal grants*—(1) *Categorical grant.* (i) The terms of this type of grant require that the work shall be performed as approved in the project application,

(ii) It shall be used in all cases for:

(A) Facilities under construction; and

(B) Private nonprofit facilities.

(iii) Reimbursement to the applicant under categorical funding except grant-in-lieu is limited to the actual reasonable cost of performing work approved by the Regional Director as eligible under the Act. It shall not exceed the net eligible cost of restoring a facility, based on the predisaster design of such facility and on the current applicable standards.

(iv) *Grant-in-lieu*: If a grantee desires to construct a larger or more elaborate facility it may apply for a grant, known as a grant-in-lieu, equal to that approved for repair or replacement of the damaged facility in accordance with these regulations. Such replacement facility may be of a design, size or type, or composed of materials significantly different from those of the eligible damaged facility. A grant-in-lieu is available only under a categorical grant.

(A) A separate request is submitted for each grant-in-lieu based on a separate Damage Survey Report.

(B) The Regional Director's conditions of approval are stated separately for each grant-in-lieu.

(2) *Flexible funding grant (section 402(f) of the Act)).* (i) If the estimated cost of permanently repairing, restoring, reconstructing, or replacing all of its damaged public facilities exceeds $25,000, an applicant may elect to receive a grant equal to 90 percent of the Federal estimate of such permanent work instead of a categorical grant. This election allows flexibility in the use of the Federal grant. When an applicant determines that restoration of certain disaster-damaged facilities would not be in the public interest, it may choose not to restore those facilities, but to build new public facilities for other purposes. The applicant shall determine that any new facilities constructed are necessary to meet its needs for governmental services and functions in the disaster-affected area. Construction of all federally assisted facilities, including any new or modified construction projects on the applicant's listing of flexibly funded projects, shall be in conformity with current applicable Federal, State, and local standards, including requirements imposed by floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

(ii) The applicant shall declare the election of flexible funding, through the Governor's Authorized Representative, to the Regional Director before the project application is approved.

(iii) A request by the applicant for a change in the type of funding after the project application has been approved shall be referred by the Regional Director with his/her recommendations, to the Associate Director for decision.

(iv) Within 90 days after the date of the Regional Director's approval of the project application, and prior to the start of design or construction of any alternate project, the applicant shall furnish a listing of the public facilities to be repaired, restored, or constructed with the flexible funding grant; the estimated cost of each; and a proposed schedule of initiation and completion, including estimated quarterly fund requirements. The listing shall provide necessary assurances that reflect applicant's compliance with special requirements, including, but not limited to, floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance. The listing shall also itemize those disaster-damaged public facilities that are not being restored.

(v) Promptly after the completion of all work for which FEMA reimbursement is requested, the applicant shall submit to the Regional Director through the State, an updated listing of completed work. This listing shall contain a description of each completed project and a certification by the Applicant's Authorized Representative of the actual cost of each project involved.

(3) *Small-project grant (section 419 of the Act).* (i) In any case in which the Federal estimate of an applicant's eligible costs for restoration under section 402 of the Act of damaged or destroyed facilities owned by the applicant, and debris removal and emergency protective work under sections 403 and 306 of the Act, respectively, total less than $25,000, the Regional Director may approve the applicant's project application for a small-project grant. This approval is in lieu of approval by the Regional Director of any other grant under section 306, 402, or 403 of the Act.

(ii) The grant approved by the Regional Director is based on 100 percent of the estimated eligible costs. Funds approved for debris removal or emergency protective work must be expended for that approved work. Funds approved for permanent restorative work may be expended (A) to perform all approved projects on the Damage Survey Reports or (B) to perform certain of these approved projects, and with the balance of the approved grant to construct certain other public facilities which the applicant determines to be necessary to meet the community's needs for public services and governmental functions in the disaster-affected area. Proposed alternate projects must be approved by the Regional Director prior to the start of design or construction.

(iii) This type of grant may not be approved for private nonprofit facilities under section 402(b) of the Act.

(iv) Upon approval of a project application, the Regional Director furnishes the applicant, through the State, with a listing of approved projects. This listing includes a description and approved estimate of cost for each project.

(v) One hundred percent grant to the applicant follows as soon as possible after the Regional Director's approval of the project application.

(vi) Within 30 days following completion of all work performed under a small project grant, the applicant shall complete the above listing by showing the cost of the completed projects, including any alternate projects substituted for those originally approved. This listing shall also include the applicant's certification that all work listed is completed and that all funds were expended in accordance with the purposes of section 419 of the Act, and these regulations, including compliance with special requirements including but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

(vii) The only permissible basis for increasing Federal funding in a small project grant is a substantive error or omission in defining the approved scope of work or in the approved estimated reasonable costs of such work. Federal funding may be reduced where the applicant fails to comply with applicable laws or FEMA regulations and procedures, including noncompliance with assurances, illegal contracting methods, duplication of benefits and nonconformity with applicable standards. If a supplement to a project application is warranted, and it would increase the small project grant to an amount exceeding $25,000, the entire grant shall revert to a categorical grant or a flexible funding grant, as approved by the Regional Director.

(viii) Any remaining balance of such grant not expended by the applicant shall be returned to FEMA.

§ 205.114 Project applications.

(a) *General.* This section describes the basic policies and procedures for processing project applications. The Governor's Authorized Representative is responsible for providing technical advice and assistance when required by an applicant in order to obtain eligible Federal grant assistance. All project applications, advances of funds, claims, appeals, payments, refunds, and other related correspondence between a local government or other applicant and the Regional Director, shall be forwarded through the office of the Governor's Authorized Representative for that official's review and appropriate action. This applies to all applicants for public assistance unless otherwise stated. (Refer also to 44 CFR 205.113(a))

(b) *Applicants' briefing.* As soon as possible following the President's declaration of an emergency or a major disaster, the Regional Director and the Governor's Authorized Representative jointly schedule and conduct meetings for all potential applicants for public assistance. Requirements and procedures for requesting and obtaining available public assistance are explained at these meetings. Applicants are furnished informative material, including handbooks and a fact sheet.

(c) *Notice of interest.* Each applicant submits a Notice of Interest which provides the basis for scheduling the damage surveys.

(d) *Damage survey reports.* Damage surveys are usually conducted by a Federal-State inspection team. An authorized local representative accompanies the Federal/State inspection team and is responsible for representing the applicant and assuring that all damage and needs for assistance are inspected. The inspectors record pertinent information on a Damage Survey Report, including a description of the damage, proposed repairs or replacement, and the inspectors' best estimate of the cost of the recommended work.

(e) *Project applications.* Project applications for Federal funding are prepared for the signature of the applicant's authorized agent and submitted through the Governor's Authorized Representative to the Regional Director for approval. The scope of work and amount of funding requested in the project application are based on Damage Survey Reports, plus such additional documentation as the Regional Director considers necessary. In applying for assistance, the applicant certifies to certain assurances which are part of the project application. (See 44 CFR 205.114(h).)

(1) *Time limitations for submittal.* Project applications and supplements for all projects requested by each applicant shall be submitted as promptly as possible within 90 days after a declaration of a major disaster or within 30 days after declaration of an emergency, or lesser time periods as specified by the Regional Director. When circumstances beyond the applicant's control warrant such action, the Regional Director may at the State's request extend these time limitations. Supplements that cover new work are subject to same time limitations as project applications. Changes in scope of work or increases in estimates of eligible costs for projects previously approved shall be reported to the Governor's Authorized Representative immediately upon determination by the applicant that such changes are necessary. The related supplements shall be submitted as soon as possible thereafter.

(2) *Funding option.* When the total estimated costs requested in the project application exceed $25,000, the applicant has a choice of the type of funding that best suits its needs, either a categorical or flexible funding grant. (See § 205.113 (b) (1) and (2).) This choice is made on the project application by the applicant. If the applicant chooses flexible funding, then the basic project application shall include only debris clearance, emergency protective measures, and other eligible emergency work and shall be handled as a categorical grant. Permanent work that is otherwise eligible for flexible funding assistance will be included in a supplement(s) to the basic project application.

(f) *Advances of funds.* (1) Final settlement does not occur until the applicant completes all approved work for which a claim is made and pays all related bills. At the applicant's request, funds may be advanced to meet the current obligations for eligible work and those anticipated for the next 60 days. An advance does not constitute final approval by FEMA of a grant; advances are discretionary and are designed to the convenience of the applicant. Further advances of funds may be made as necessary; however, the total of advanced funds may not exceed the percentage agreed upon by the Regional Director and the Governor's Authorized Representative. The advance of funds is based on a project application approved either as a categorical or flexible funding grant. The applicant may request an advance of funds at the time its project application is submitted or after the project application is approved, depending upon the applicant's need.

(2) States, as well as applicants for categorical or flexible funding grants, shall adopt procedures which minimize the time elapsing between the transfer of funds from the United States Treasury to the State or grantee and their subsequent disbursement by the grantee for authorized program purposes.

(g) *Supplemental project applications.* Supplemental project applications under a categorical grant may be submitted by or on behalf of an applicant for new or additionl work, or for other increases in funding found to be necessary after the basic project application was submitted.

(h) *State review and approval.* The Governor's Authorized Representative(s) shall review all project applications and supplemental project applications and shall recommend approval or disapproval. As a condition for FEMA approval, the State and the applicant shall provide the assurances on the reverse side of the standard form used for submitting project applications to FEMA. Any grantee or recipient of such FEMA funding other than the State or the applicant shall also provide these assurances plus such other assurances as may be required by these regulations or by the Regional Director.

(i) *Regional Director's review and approval.* The Regional Director reviews the project application and supplemental project applications for eligibility of work, reasonableness of costs, and other considerations. He/she then notifies the applicant through the Governor's Authorized Representative of the approval or disapproval, and conditions, if any. Funds are obligated upon the Regional Director's approval, and advances may be made any time after obligation of funds. In the case of a small-project grant, final reimbursement is made when the Regional Director approves the project application.

§ 205.115 Documentation.

(a) All recipients of Federal grants must maintain acceptable disbursement and accounting records to document the work performed and cost incurred on each approved DSR. The documentation required to be maintained by the applicant shall include but not be limited to the following:

(1) Force Account Work—copies of invoices, payroll extracts (cross referenced to source documents), equipment schedules, foreman's daily logs, and issued checks.

(2) Contract Work—copies of requests for bids, bid documents, bid summaries, contracts, invoices, inspectors daily logs, and issued checks.

(b) If an audit is necessary, original or source documents must be made available to auditors at one central office of record. These accounting records and documentation must be kept by the applicant for three years from the date of the final settlement of the claim.

(c) FEMA auditors, State auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall for the purpose of audits and examination have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under these regulations.

(d) All copies of audit reports that are required under OMB Circular A-128 shall be submitted to the FEMA District Inspector General for Audit responsible for the FEMA region in which the applicant is located. The FEMA Office of Inspector General will distribute copies as appropriate within the agency.

(The information collection requirements contained in paragraph (b) of this section were approved by the Office of Management and Budget under OMB Control number 3067-0149)

[50 FR 32064, Aug. 8, 1985]

§ 205.116 Project performance.

(a) The primary responsibility for managing the approved projects rests with the applicant.

(1) *Force account.* Eligible work may be performed under force account. The applicant may use its own equipment or other publicly owned equipment. The applicant may rent privately-owned equipment to perform eligible disaster-related work. Each applicant using force account shall maintain adequate, auditable records for each line item of eligible work.

(2) *Contract*: Eligible work may be performed partially or totally by contract.

(b) *Time limitations for completion of work*—(1) *Emergencies.* Federal emergency assistance shall terminate no later than one month after the determination that an emergency exists, except:

(i) Based on extenuating circumstances beyond the control of the applicant, the Regional Director may extend the time limitation not to exceed an additional two months.

(ii) Based on a determination that such action is warranted, the Associate Director may extend the time limitation completion date beyond three months when requested to do so by the State.

(2) *Major disasters.* (i) Federal assistance shall begin with the start of the

incident period under the President's declaration of a major disaster as established in the Federal-State Agreement and, except for the situation described in paragraph (b)(2)(ii) of this section, shall terminate upon expiration of these prescribed deadlines:[1]

COMPLETION[2] DEADLINES

	Months
(A) Debris clearance	6
(B) Emergency work	6
(C) Permanent work	18

[2] These time limitations apply to categorical grants and to grants involving flexible funding under sections 402(f) and 419 of the Act. The Regional Director may require an applicant to submit a completion schedule through the State for his approval.

(ii) *Exceptions.* (A) Based on extenuating circumstances or unusual project requirements beyond the control of the grantee, the Regional Director may extend the deadlines under § 205.116(b)(2)(i) (A) and (B) for a period not to exceed six months and under (C) for a period not to exceed one year, on a project-by-project basis.

(B) Based on a determination that such action is warranted, the Associate Director may extend any of the deadlines prescribed by this action.

(iii) The Regional Director may impose lesser deadlines for completion of work under paragraph (b)(2)(i) of this section, if considered appropriate.

(iv) When an applicant fails to make a timely start of work approved under the Act, the Regional Director shall review the project approval and may suspend or withdraw his approval of Federal funding.

(c) *Progress reports.* For any permanent projects that the applicant does not expect to complete within 18 months from the date of the disaster declaration, the applicant shall submit work schedules with the application or supplement for approval by the Governor's Authorized Representative and by the Regional Director. When required by the Regional Director or the Governor's Authorized Representative, the applicant shall provide the Governor's Authorized Representative with periodic progress reports of scheduled work, outlining any problems and unforeseen circumstances that are expected to result in a slippage in the schedule. The Governor's Authorized Representative may use such reports to take action to eliminate the causes of delays and to identify projects that may require time extensions. The Governor's Authorized Representative shall provide the Regional Director with copies of these progress reports together with comments and a report of actions taken. Any changes in approved schedules must be justified by the applicant and approved by the Governor's Authorized Representative and by the Regional Director.

(d) *Requests for time extensions.* If an applicant finds that an approved project cannot be completed within the time limit prescribed by the Regional Director, the applicant shall forward promptly to the State a request in writing for additional time, together with justification for delay in completion of the project. The Governor's Authorized Representative shall forward the request with a recommendation to the Regional Director. The Regional Director shall notify the applicant, through the State, of approval or denial. Requests for time extensions beyond the Regional Director's authority are forwarded by the Regional Director to the Associate Director for his action.

(e) *Cost overruns.* During the execution of approved work under categorical grants, the applicant may find that overruns are occurring on the actual costs of certain projects, compared to the approved estimates on the Damage Survey Reports. Such cost overruns fall into two main categories:

(1) Overruns because of variations in unit prices and

(2) Overruns because of change in scope of eligible work.

The applicant should report these situations to the Governor's Authorized Representative immediately so that appropriate actions can be taken to verify eligibility of the overruns. An interim inspection by a Federal inspector may be necessary. Upon verification of eligibility documented by amended Damage Survey Reports, a supplemental project application to cover the overrun may be submitted.

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[1] The Regional Director may also impose deadlines under this paragraph for initiation of work.

§ 205.117 Claims for reimbursement.

(a) *Categorical and Flexible Funding Grants.* The applicant shall submit a claim to the Governor's Authorized Representative within 60 days after completion of approved work. This claim will list the cost and date of completion for each approved project. The applicant's authorized representative must certify that all work claimed has been completed and that all funds claimed have been paid.

(b) *Small Project Grants.* Final payment is made when a project application is approved. Therefore, no claim for reimbursement is required. The applicant must however submit a listing of completed projects within 30 days following work completion in accordance with 44 CFR 205.113(b)(3)(vi).

[50 FR 32064, Aug. 8, 1985]

§ 205.118 Interim and final inspections.

(a) *Governor's Authorized Representative.* Within 30 days of receipt of the applicant's claim for reimbursement, the Governor's Authorized Representative shall submit the applicant's completed project listing to the Regional Director for final inspection scheduling purposes.

(b) The Regional Director shall schedule and conduct those final inspections as required by this section and any additional interim and final inspections deemed necessary. The Regional Director shall ensure that the Governor's Authorized Representative receives copies of all completed final inspection reports.

(c) *Final inspection requirements.* The following requirements for final inspections are applicable to categorical and flexible funding grants.

(1) When the total claim for a completed project exceeds $25,000, a final inspection is required.

(2) When the total claim for a completed project is less than $25,000, the Regional Director may accept the applicant's certification that all work is complete.

[50 FR 32064, Aug. 8, 1985]

§ 205.119 Review and approval of claims.

(a) *Governor's Authorized Representative.* The Governor's Authorized Representative shall review all claims and recommend to the Regional Director an amount for approval. The Governor's Authorized Representative shall submit the applicant's final claim to the Regional Director within 60 days after receipt of the final inspection report and will certify that the funds were expended in accordance with the provisions of the FEMA-State Agreement.

(b) *Regional Director.* Following a review of the applicant's claim and the Governor's Authorized Representative's recommendation, the Regional Director will determine the final eligible amount. During the Regional review process the Regional Director may conduct a field review to gather additional information. If discrepancies in the applicant's claim cannot be resolved through a field review, a Federal audit may be requested. A Federal audit should be used as a last resort in the reconciliation of a claim. Requests for Federal audits must be in writing and must provide a detailed justification as to the need for audit. If the Regional Director does not argee with the findings of the Federal Audit and the claim cannot be resolved at the Regional level, the case will be forwarded to the Associate Director for resolution. The Regional Director or Associate Director may require additional Federal audits if necessary.

[50 FR 32064, Aug. 8, 1985]

§ 205.120 Federal funding.

(a) *Management of Federal funds.* The State shall properly account for all Federal funds made available to the State under these regulations as Federal funds in the accounts of the State. In each case, the State agency concerned shall provide such authenticated reports as the Associate Director or the Regional Director may require, covering the status and application of the funds, the liabilities and obligations on hand, and other pertinent information.

(b) *Release of Federal funds for State or local governments.* Requests for advance of funds or reimbursement that are approved by the Regional Director are forwarded to the FEMA National Office, where they are processed to the U.S. Treasury for payment.

(c) *Recovery of excess advances from State or local governments.* (1) A bill for collection will be issued to the State immediately upon verification that the applicant has received funds in excess of the amount approved by the Regional Director as final settlement of its claim. In the event that there is an appeal by the applicant pending, the bill for collection may not be issued until the appeal is settled by the Regional Director or the Associate Director. The States shall advise applicants that the bills for collection are due upon receipt and that any appeals of the bills must be filed with the Regional Director within 60 days, the time limit established in 44 CFR 205.120.

(2) If by the expiration of the period for appeals the Regional Director has not received payment for the full amount of the bill for collection, he/she shall notify the appropriate State official in writing for transmittal to the applicant that the amount owed is past due, and that the claim is being referred to the Claims Collection Officer for further action. This action may include offset against future claims for disaster relief from the applicant or the State.

(d) [Reserved]

(e) *Return of overadvanced funds by other Federal agencies.* Other Federal agencies shall promptly return to FEMA any advances of funds which are excess to their requirements in carrying out assignments made to them by FEMA.

[45 FR 45863, July 7, 1980, as amended at 47 FR 52178, Nov. 19, 1982. Redesignated at 50 FR 32064, Aug. 8, 1985]

§ 205.121 Appeals.

(a) An applicant may request the Governor's Authorized Representative to submit an appeal to the Regional Director for reconsideration of any determinations that the Regional Director made related to Federal assistance for that applicant. The applicant's written request shall be made within 60 days of the date of the Regional Director's action that is being appealed and shall include such additional information as appropriate justification. However, in the event that the additional information is not immediately available, the applicant shall within the 60-day period notify the State in writing of its intention to appeal, and shall then follow up with the required documentation.

(b) The State shall forward such appeals within 30 days of receipt of the appeal from the applicant, together with the State's comments, recommendations, and any additional information it may have.

(c) Upon receipt of an appeal, the Regional Director shall review the material submitted and make such additional investigation as he/she deems appropriate. Following the review and investigation, the Regional Director shall notify the State, in writing, of his/her decision to grant or deny the appeal. If the decision is to grant the appeal, the Regional Director shall take such additional action as is necessary to implement his/her decision.

(d) If the Regional Director denies the appeal, the applicant may request the State to submit a second appeal to the Associate Director. Such appeal shall be made in writing through the Regional Director, and shall be submitted not later than 60 days after receipt of notice of the Regional Director's denial of the appeal. Action by the Associate Director is final.

(e) If an applicant requests the State to make an appeal to the Regional Director or to the Associate Director in accordance with this section and the State declines, or takes no action on the request, the applicant may make an appeal directly to the Regional Director. The appeal by the applicant shall be made in writing within 60 days after receipt from the State of the notice of determination by the Regional Director, or notification by the State, that it will not make an appeal.

(f) Based on his/her determination that such action is warranted, the Associate Director or the Regional Director may extend any of the time periods prescribed by this section.

[45 FR 45863, July 7, 1980. Redesignated at 50 FR 32064, Aug. 8, 1985]

§ 205.122 Direct Federal assistance.

(a) Neither eligible emergency work, nor eligible permanent work under the provisions of section 402 of the Act, may be performed by or under the direct supervision of a Federal agency except in certain circumstances. When in rare cases the State or local government lacks the capability to perform or to contract for the eligible work, the applicant may request that the work be accomplished by a Federal agency. However, it is not anticipated that mission assignments to other Federal agencies can very often be justified. Such assistance is subject to eligibility criteria for proposed work contained in Subpart E—Public Assistance—of these regulations. Details concerning reimbursement of other Federal agencies are contained in Subpart I.

(b) *Requests by applicants*: (1) The applicant shall submit requests for direct Federal assistance through the Governor's Authorized Representative for the Regional Director's approval.

(2) Requests must be made within 10 days after a major disaster declaration, or an emergency declaration, unless that period is specifically extended or shortened by the Regional Director.

(3) Time limitation for completion of emergency work or debris removal by a Federal agency under a mission assignment is three months after President's declaration. The applicant or State must be prepared to take over any emergency work not completed by the Federal agency within the three month period.

(4) The request shall be in the form of a resolution by the governing body of an eligible applicant, and shall include its agreement to:

(i) Provide without cost to the United States all lands, easements, and rights-of-way necessary to the accomplishment of the approved work; and

(ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work.

(5) The request shall be accompanied by:

(i) A statement of the reasons why the emergency work cannot be performed by the applicant, or by any other local government; and

(ii) Assurance by the applicant of compliance with Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (42 U.S.C. 2000d-2000d-4), and section 311, Pub. L. 93-288.

(c) *Request by Governor's authorized representative*: (1) In those instances where the required resolution by each applicant cannot be obtained on a timely basis to meet immediate needs, the Governor's Authorized Representative may submit a State request for direct Federal assistance for the Regional Director's approval.

(2) The FEMA policy in providing direct Federal assistance in response to a State request is that the immediate requirements for such debris removal or emergency work must clearly exceed State and local capabilities for timely accomplishment and is available only for major disasters of unusual magnitude or severity. Whenever feasible, it is expected the responsible State or local government shall develop the necessary capabilities to perform any remaining eligible work within ten days after the Presidential declaration, or that each unable to do so shall submit an appropriate resolution for continuation of direct Federal assistance. The Regional Director shall terminate direct Federal assistance in response to the State request on the tenth day after the Presidential declaration, except for any extension justified by an appropriate resolution from an applicant on a case-by-case basis. Whenever feasible, technical advice or assistance shall be provided to an applicant to eliminate any requirement for direct Federal assistance. It is also expected that the capabilities of the State or other local governments shall be fully committed before any direct Federal assistance is authorized.

(3) Such State requests must be submitted within two days after the date of declaration of a major disaster or emergency and shall have a time limitation which expires ten days after the date of declaration. During this period, the interested applicants shall submit an appropriate request

through the Governor's Authorized Representative in accordance with paragraph (b) of this section. The Regional Director's approval must be obtained before the expiration of the tenth day after the declaration for the desired Federal assistance to continue.

(4) The Federal agency performing direct Federal assistance in response to a State request shall contact the applicant's authorized representative of each applicant designated specifically by the Regional Director in coordination with the Governor's Authorized Representative. Before any Federal assistance is provided, the applicant's authorized representative shall request the Federal agency to perform the desired work, confirming each verbal request in writing without delay. No direct Federal assistance shall be performed without such prior request.

(5) The State request shall include its agreement to:

(i) Provide without cost to the United States all lands, easements, and rights-of-way necessary to the accomplishment of the approved work; and

(ii) Hold and save the United States free from damages due to the requested work, and indemnify the Federal government against any claims arising from such work.

(6) The request shall be accompanied by:

(i) A statement of the reasons why the emergency work cannot be performed by a local government or by the State; and

(ii) Assurances by the State of compliance with Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241.

(7) Emergency work on debris removal by direct Federal assistance in response to such a State request shall be performed on publicly-owned property. Under exceptional circumstances when in the public interest, and based on written assurances of right-of-entry and indemnification provided by the State, the local government, or the owner, such direct Federal assistance may be performed on private property.

(d) *Approval*—(1) *State.* If the Governor's Authorized Representative concurs that the emergency work is necessary and cannot be accomplished by the applicant, by another local government, or by the State, he/she shall endorse the applicant's request for direct Federal assistance and forward it to the Regional Director, together with a statement of the reasons why the State cannot provide the requested assistance.

(2) *Regional Director.* (i) If the Regional Director approves the request, he/she shall issue a mission assignment to the appropriate Federal agency. The assignment letter to the agency shall define the scope of eligible work. Prior to execution of work on any project, except under unusual circumstances approved by the Regional Director, the Federal agency shall submit a Damage Survey Report to the Regional Director for review and approval to establish the scope of eligible work and approved cost limitations. The Federal agency shall not exceed the limit on funding approved by the Regional Director without obtaining prior approval of supplemental funding.

(ii) If all or any part of the requested work falls within another Federal agency's statutory authorities and capabilities, the Regional Director shall not approve it. Instead, he/she shall refer the request to the other Federal agency for action.

(e) *Project management*—*(1) Federal agency responsibilities.* The performing Federal agency shall ensure that the work is performed and completed in accordance with the Regional Director's approved scope of work, costs, time limitations, and applicable standards. The performing Federal agency shall also keep the Regional Director, the Governor's Authorized Representative, and the applicant advised of work progress and other developments. The Federal agency is also responsible for obtaining any necessary permits or licenses; for compliance with applicable State and local laws or other requirements; and for compliance with these regulations and other applicable handbooks or guidance by the Regional Director. The Federal agency shall also provide a final inspection report signifying completion of the approved work which has been signed by the Federal agency's inspector and the applicant's authorized agent.

(2) *Applicant responsibilities*. The applicant shall assist the performing Federal agency in all support and local jurisdictional matters that a private owner would assume in a relationship to a performing contractor. These matters include securing local building permits and rights of entry, control of traffic and pedestrians in the interest of safety and public welfare, and compliance with local building ordinances. Refer also to 44 CFR 205.76(a)(7) regarding eligibility of costs of administrative expenses.

[45 FR 45863, July 7, 1980. Redesignated at 50 FR 32064, Aug. 8, 1985]

§ 205.123 Availability of materials.

For the purposes of this section, "construction materials" shall include building materials and materials required for repair or replacement of housing, public facilities, or normal farm and business facilities. The Regional Director may, at the request of the Governor of an affected State, provide for a survey of construction materials needed in the disaster affected area on an emergency basis for housing repair, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and may take appropriate action to assure the availability and the fair distribution of needed materials. Where possible, such action may include the voluntary allocation of such materials for a period of not more than 180 days after the major disaster. The Regional Director shall implement any allocation program to the extent possible by working with and through those companies that traditionally supply construction materials in the affected area.

[45 FR 45863, July 7, 1980. Redesignated at 50 FR 32064, Aug. 8, 1985]

APPENDIX A TO SUBPART H—OFFICE OF MANAGEMENT AND BUDGET CIRCULAR NO. A-128—UNIFORM AUDIT REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTS

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A-128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose*. This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession*. The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background*. The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy*. The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions*, developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98-502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments,* issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assist-

ance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) of this appendix for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the

cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
—Negative assurance on those items not tested;
—A summary of all instances of noncompliance; and
—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f of this appendix.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

- Withholding a percentage of assistance payments until the audit is completed satisfactorily,
- Withholding or disallowing overhead costs, and
- Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph 19. a. of this appendix when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,
Director.

ATTACHMENT—CIRCULAR A-128

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

[50 FR 32064, Aug. 8, 1985]

Subpart I—Reimbursement of Other Federal Agencies

SOURCE: 45 FR 26053, Apr. 17, 1980, unless otherwise noted.

§ 205.150 Purpose.

This subpart prescribes the procedures for obtaining or authorizing the provision of services or use of resources of other Federal agencies in providing assistance under the authorities of the Act. It is effective for assistance obtained or authorized in emergencies or major disasters declared after August 2, 1976. Further details of direct Federal assistance other than reimbursement are covered in Subpart H, § 205.121.

§ 205.151 Assistance from other Federal agencies.

(a) The Associate Director or Regional Director, in determining the nature and extent of assistance required to implement authorities under the Act, shall consider the types of assistance available from other Federal agencies. Either the Associate Director or the Regional Director may request or direct other Federal agencies to provide available assistance as necessary.

(b) All requests or directives to other Federal agencies shall be in writing, or shall be confirmed in writing if made orally, and shall contain a specific reference to the anticipated level of reimbursement.

§ 205.152 Expenditures eligible for reimbursement.

(a) The Associate Director or the Regional Director may not approve reimbursement of costs incurred while performing work under an agency's own authority.

(b) The Associate Director or the Regional Director may approve reimbursement of the following costs which are incurred in providing requested assistance.

(1) Overtime, travel, and per diem of permanent Federal agency personnel.

(2) Wages, travel, and per diem of temporary Federal agency personnel assigned solely to performance of services requested by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Associate Director.

(3) Travel and per diem of Federal military personnel assigned solely to performance of services requested by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Associate Director.

(4) Cost of work, services, and materials procured under contract for the purposes of providing assistance requested by the Associate Director or the Regional Director.

(5) Cost of materials, equipment, and supplies (including transportation, repair, and maintenance) from regular stocks used in providing requested assistance.

(6) All costs incurred which are paid from trust, revolving, or other funds, and whose reimbursement is required by law.

(7) Other costs submitted by an agency with written justification or otherwise agreed to in writing by the Associate Director or the Regional Director and the agency.

§ 205.153 Procedures for reimbursement.

(a) Federal agencies may submit requests for reimbursement of amounts greater than $1,000 at any time. Requests for lesser amounts may be submitted only quarterly. An agency shall submit a final accounting of expenditures within 90 days after completion of the agency's work under each request or directive for assistance. Requests for reimbursement are made on SF 1081, Voucher and Schedule of Withdrawals and Credits.

(b) An agency shall document its request for reimbursement with specific details on personnel services, travel, and all other expenses by object class as specified in OMB Circular A-12 and by any subobject class used in the agency's accounting system. Where contracts constitute a significant portion of the billings, the agency shall provide a listing of individual contracts and their associated costs.

(c) Reimbursement requests shall cite the specific directive or request for assistance under which the work was performed, and the disaster identification number. Requests for reimbursement of costs incurred under more than one directive or request may not be combined for billing purposes.

(d) Unless otherwise agreed, an agency shall direct all requests for reimbursement to the Regional Director of the region in which the costs were incurred.

(e) A Federal agency requesting reimbursement shall retain all financial records, supporting documents, statistical records, and other records pertinent to the provision of services or use of resources by that agency. These materials shall be accessible to duly authorized representatives of FEMA and the U.S. Comptroller General, for the purpose of making audits, excerpts, and transcripts, for a period of 3 years starting from the date of submission of the final billing.

Subpart J—General Insurance Requirements

SOURCE: 44 FR 71794, Dec. 11, 1979, unless otherwise noted.

§ 205.200 General.

(a) Section 314 of the Act, and the Flood Disaster Protection Act of 1973, Pub. L. 93-234, establish insurance requirements as a condition for approving certain disaster assistance under the Act. This subpart pertains to assistance under sections 402 and 419 of the Act. Specific requirements pertaining to flood insurance under Pub. L. 93-234, as amended, are contained in Subpart K of this regulation.

(b) Prior to approval of a Federal grant for the restoration of property, the applicant shall notify the Regional Director of any entitlement to insurance settlement or recovery for such property. The Regional Director shall reduce the grant by the actual amount of insurance proceeds received by the applicant. In the event that insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement shall be limited to eligible costs as determined by the Regional Director after deducting the maximum amount otherwise recoverable under and to the limit of the applicant's insurance policy.

§ 205.201 Definitions as used in this subpart.

(a) "Assistance" means any form of Federal grant under sections 402 or 419 of the Act to replace, restore, repair, reconstruct, or construct any property as the result of a major disaster or emergency declaration and which property is not excluded pursuant to § 205.202.

(b) "Property" means any structure, vehicles, equipment, materials, or supplies.

§ 205.202 Exclusions.

The following categories of Federal disaster assistance are excluded from the requirements to obtain and maintain such insurance as is required by section 314 of the Act and by this subpart:

(a) Emergency assistance provided under section 305 or 306 of the Act.

(b) Assistance otherwise eligible under section 402 or 419 of the Act for any State-owned property that is covered by an adequate State policy of self-insurance approved by the Associate Director for Disaster Response and Recovery (the Associate Director).

(c) Assistance under section 402 or 419 of the Act for any property for which insurance is not reasonably available, adequate, and necessary, such as: Roads, streets, bridges, and other highway facilities; traffic controls; parking meters; drainage channels and debris basins; dikes and levees; pumping stations; and utility distribution systems.

(d) Assistance for which flood insurance is required under Pub. L. 93-234, as implemented by 44 CFR Part 205, Subpart K.

§ 205.203 Applicability.

(a) The requirements of this subpart shall apply to all assistance pursuant to section 402 or 419 of the Act with respect to any major disaster or emergency declared by the President after May 22, 1974, unless excluded under § 205.202.

(b) The Regional Director may not approve any such assistance unless the applicant has provided assurances, acceptable to the Regional Director, that the applicant will obtain and maintain any insurance required under these regulations.

(c) The Regional Director may defer approval of otherwise eligible project applications for up to 6 months to permit the applicant to provide such assurances referred to in paragraph (b) of this section. The Associate Director may extend the time for submission of such assurances by the applicant.

(d) No applicant for assistance under section 402 or 419 of the Act shall receive assistance for any property or part thereof for which it has previously received assistance under the Act unless the applicant obtained and maintained the insurance required under section 314 of the Act and these regulations with respect to such property. In cases where insurance was not maintained, any assistance shall be reduced by the insurance settlement which would have been received had the required insurance coverage been maintained in force.

(e) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit facilities which receive assistance under section 402(b) of the Act. Private nonprofit organizations shall submit the necessary documentation and assurances required by this subpart through the appropriate applicant.

(f) The Regional Director shall require flood insurance as the result of the flooding major disaster, when reasonably available, adequate, and necessary under section 314 of the Act for assistance even though the flood damaged building concerned is located outside the base floodplain.

§ 205.204 Type of insurance.

(a) Assurances by the applicant under this subpart to obtain reasonably available, adequate, and necessary insurance shall be required only for the type or types of hazard for which the major disaster was declared. The Regional Director shall not require greater types and extent of insurance than are certified to him/her as reasonable by the appropriate State Insurance Commissioner responsible for regulation of such insurance.

(b) The Regional Director shall make a determination as to the type and extent of insurance that is reasonable when he/she is unable to obtain a prompt certification by the State Insurance Commissioner in response to a formal written request.

§ 205.205 Extent of insurance.

Prior to approval of assistance under section 402 or 419 of the Act to replace, restore, repair, reconstruct, or construct any property for which insurance is required under this subpart, the applicant shall provide assurances acceptable to the Regional Director that it will obtain and maintain reasonably available, adequate, and necessary insurance to protect against future loss in an amount equal to the amount of the grant under section 402 or 419.

§ 205.206 Duration of insurance coverage.

The applicant shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or of the insured property, which is the lesser.

§ 205.207 Assurances for categorical grants.

Where insurance is required under this subpart, the applicant shall submit evidence of applicable insurance coverage or other related assurances with the project application. The type and extent of such insurance coverage shall be subject to approval by the Regional Director.

§ 205.208 Assurances for flexible funding.

When applying for assistance under the provisions of sections 402(f) and 419 of the Act, the applicant shall provide assurances acceptable to the Regional Director that it will obtain and maintain such insurance as required by section 314 of the Act and the regulations in this subpart. As part of such assurance, the applicant shall agree to provide to the Regional Director a listing of insured property, including location, description, extent and duration of insurance coverage, name and address of the insurer, and applicable insurance policy numbers. The Regional Director, after a review of the listing and schedule required by Subpart H (Project Administration) and other reviews as he/she considers necessary shall, if appropriate, require the applicant to obtain additional insurance under the Act and these regulations.

§ 205.209 Self-insurance.

A State may elect to act as a self-insurer with respect to any or all of the facilities belonging to it. Such an election, if declared in writing at the time of accepting assistance under section 402 or 419 of the Act or subsequently, and if accompanied by a plan for self-insurance which is satisfactory to the Associate Director, shall be considered as complying with section 314(a) of the Act. After approval as self-insurer by the Associate Director, no State shall receive assistance under such sections for any property or part thereof for which it has previously received assistance under the Act, to the extent that insurance for such property or part thereof would have been reasonably available.

Subpart K—Flood Insurance Requirements

SOURCE: 45 FR 37440, June 3, 1980, unless otherwise noted.

§ 205.250 General.

(a) The Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, imposes certain restrictions on approval of Federal financial assistance for acquisition or construction purposes for use in any area defined by the Director, FEMA, as an area having special flood hazards. This subpart implements Pub. L. 93-234 as amended, except as specified in paragraph (b) of this section.

(b) Specific flood insurance requirements pertaining to Temporary Housing Assistance and Individual and Family Grants are contained in new Subpart D, §§ 205.52 and 205.54, respectively. To the extent this subpart is inconsistent with those sections, the more specific regulations in those sections apply.

§ 205.251 Definitions.

As used in this subpart:

(a) "Building" means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, as well as a mobile home on a foundation.

(b) "Community" means any State or area or political subdivision thereof, or any Indian tribe or authorized tribal organization, or Alaska Native Village or organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

(c) "Federal financial assistance" means any loan or grant or other form of direct or indirect Federal financial assistance under the Act and these regulations which is not excluded under § 205.252.

(d) "Financial assistance for acquisition or construction purposes" means any form of Federal financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machines, equipment, fixtures, and furnishings contained or to be contained in them but shall exclude assistance pursuant to the Disaster Relief Act of 1974 (other than assistance under such Act in connection with a flood).

(e) "National Flood Insurance Program" (NFIP) means the program authorized by 42 U.S.C. 4001-4128.

§ 205.252 Exclusions.

(a) The following categories of Federal disaster assistance are excluded from the provisions of the Flood Disaster Protection Act of 1973:

(1) Federal financial assistance on any State-owned property that is already covered by an adequate State policy or self-insurance approved by the Director, Federal Emergency Management Agency.

(2) Federal financial assistance under Title II of the Act.

§ 205.253 Applicability.

(a) Federal financial assistance for acquisition or construction purposes.

(1) FEMA shall not approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director, FEMA, as an area having special flood hazards unless the community in which such area is situated is participating in the National Flood Insurance Program at the time of the approval. This prohibition applies only to communities which have been formally identified for at least one year as communities containing one or more areas having special flood hazards. The "time of approval" of financial assistance is the date on which the authorized FEMA official obligates Federal grant or loan funds. This subsection does not mandate a requirement for community participation in connection with damage resulting from a hazard other than flooding.

(2) FEMA shall not approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director, FEMA, as an area having special flood hazards and in which the sale of flood insurance is available under the National Flood Insurance Program unless the building or mobile home and their contents to which the financial assistance relates are or will be covered by an adequate policy of insurance. As in § 205.253(a)(1) of this part, this subsection does not mandate a requirement for an insurance purchase in connection with damage resulting from a hazard other than flooding.

(i) As a condition for receiving a grant under the Act, an adequate flood insurance policy for a project involving emergency or permanent work shall be:

(A) The Standard Flood Insurance Policy (44 CFR Part 61, Appendix A) or one which complies with the criteria for the "Acceptance of Private Flood Insurance To Meet Statutory Requirement (43 FR 7147, at "D"); and

(B) Purchased and maintained to cover the insurable building and any contents to which the grant relates during the anticipated useful life of the project, as determined by the Regional Director, in an amount equal to the lesser of the project cost (less estimated land cost, if any) or the maximum available limits of flood insurance coverage under the National Flood Insurance Act of 1968.

(ii) For purposes of this paragraph (a)(2), the term "project" shall mean the construction, acquisition, restoration or repair of a building or a part thereof together with the repair, restoration or replacement of any personal property to which the financial assistance relates.

(3) In the case of paragraph (a)(1) or (2) of this section, any building may become eligible for Federal financial assistance if the community concerned:

(i) Qualifies for and enters the NFIP within six months after the date of the Presidential declaration,

(ii) Obtains and maintains the necessary flood insurance, and

(iii) Provides FEMA with written evidence of that insurance.

(4) If the applicant replaces a building outside of the base floodplain, Federal financial assistance will not be denied for failure of the community to participate in the NFIP or to obtain/maintain flood insurance, unless required under Subpart J of these regulations by the Regional Director as a condition for disaster assistance under the Act.

(b) The Regional Director shall work closely with the Governor's Authorized Representative, and State and local governments, to ensure that the provisions of this subpart for special flood hazard areas are considered in the processing and approval of project applications. In addition, the Regional

Director shall require compliance with the provisions of this subpart in issuing mission assignments for direct Federal assistance under Subpart H of these regulations whenever property subject to the provisions of the Flood Disaster Protection Act of 1973 is involved.

(c) For any State owned building not covered by an approved State policy or self-insurance, the Regional Director shall require proof of adequate flood insurance covering proposed disaster assistance eligible for reimbursement under the Act.

(d) In accordance with paragraphs (a) (1) and (2) of this section, the applicant shall make a commitment to continue flood insurance for the useful life of the project, as determined by the Regional Director. For those buildings on which the eligible applicant is delinquent on prior flood insurance commitments in previous disasters, the Regional Director shall suspend any future Federal financial assistance for acquisition or construction purposes until such delinquency is eliminated. In such cases, any assistance shall be reduced by the insurance settlement which would have been received had the required insurance coverage been maintained in force.

(e) When a State has been approved by the Director, FEMA, as a self-insurer prior to the declaration of a major disaster or an emergency, the Regional Director shall determine the amount of self-insurance applicable to any building damaged by a major disaster and shall deduct such self-insurance coverage from the Federal grant for disaster assistance work.

(f) In administering this section, the Regional Director shall utilize current information from the Federal Insurance Administration to identify States having a satisfactory program of self-insurance, the communities eligible for flood insurance under the regular or emergency programs, flood hazard boundary maps, and flood insurance rate maps.

Subpart L—[Reserved]

Subpart M—Hazard Mitigation

SOURCE: 44 FR 64809, Nov. 8, 1979, unless otherwise noted.

§ 205.400 General.

(a) *Purpose.* The purpose of this subpart is to prescribe the actions and procedures for implementing section 406, Pub. L. 93-288, as amended. Any conflicting provisions elsewhere in 44 CFR Part 205 are superseded by this subpart. It is also the purpose of this subpart to clarify the responsibilities for hazard mitigation of the various Federal agencies and State and local governments as the result of a major disaster or emergency declared by the President.

(b) This subpart covers actions, procedures, standards, and criteria for accomplishing optimum results in reduction, avoidance and mitigation of all types of future disasters. These regulations are intended for the use of Federal, State and local governments, as well as organizations and individuals administering or receiving Federal grant or loan assistance as the result of a major disaster or emergency. They are also intended to complement and reinforce implementation in other subparts of these regulations of:

(1) The President's Executive Order 11988 on Floodplain Management and Executive Order 11990 on Protection of Wetlands; and (2) the National Environmental Policy Act, of 1969 Pub. L. 91-190. When a major disaster or emergency occurs, the hazard mitigation actions to cope with those hazards identified as the result of the major disaster or emergency shall receive priority.

§ 205.401 Definitions.

In this subpart reference is frequently made to such words as hazard reduction, avoidance, and mitigation; land use and construction regulations; and disaster proofing. As used in this subpart:

(a) "Avoidance" means to eliminate a hazard through measures such as relocation or prohibition of construction within an area susceptible to risk or danger, or by other means.

(b) "Construction practices" means codes, standards, and specifications applicable to repairs, or to alterations or new construction of a facility or structure.

(c) "Disaster proofing" means those minimum alterations or modifications to damaged facilities that could be expected to prevent or substantially reduce future damages to the repaired or reconstructed facility, or to make it disaster resistant.

(d) "Hazard" means any natural source of danger or element of risk identified following a major disaster or emergency.

(e) "Land use regulations" include zoning for purposes compatible with prudent floodplain management and both preventive and corrective restrictions on construction, repairs, or alterations of facilities within specified areas. Preventive restrictions provide regulation of new land use, i.e., nonstructural disaster control measures such as use of high hazard areas for parks, farms, and recreational areas. Corrective restrictions include:

(1) Floodproofing;

(2) Acquisition;

(3) Insurance;

(4) Removal of non-conforming uses.

(f) "Mitigation" means to alleviate by softening and making less severe the effects of a major disaster or emergency and of future disasters in the affected areas, including reduction or avoidance.

(g) "Reduction" means to diminish in strength and intensity or to restrict or lessen the size, amount and extent of damage resulting from the major disaster or emergency or to be expected as the result of future disasters.

§ 205.402 Implementing actions.

(a) The FEMA role under section 406 of the Act is one of providing leadership, not through mandates, but through governments and assistance to them in their initiatives to develop and maintain effective mitigation standards. FEMA must provide realistic and attainable mitigation options for their consideration and adoption. Ultimately, improved programs can only be developed when each party understands the benefits to be gained through hazard mitigation and is willing to work in a shared environment of cooperation and commitment.

(b) While the need to respond quickly to disasters and life-threatening conditions must remain paramount, FEMA shall assure that the ultimate benefits to be gained through effective hazard mitigation programs are not diminished and remain a primary objective.

(c) FEMA shall provide technical advice and assistance for hazard mitigation to local or State governments and to certain private nonprofit organizations eligible for grant assistance under section 402(b) of the Act. Such technical advice and assistance shall be supplementary to that available from any other State or Federal agencies under their existing programs. Technical advice may also be provided for water conservation measures in affected areas short of water as the result of the major disaster or emergency.

(d) FEMA shall encourage local or State governments to adopt safe land-use regulations and construction practices or standards. When such action is taken, after the declaration of a major disaster or emergency, the Associate Director may approve such regulations, practices or standards as applicable deviations as a condition for any Federal grants under section 402 of the Act. When such action is not taken, the Associate Director may still prescribe appropriate standards as applicable to federally-assisted projects resulting from the major disaster or emergency being restored under section 402 of the Act. The Associate Director may also prescribe such standards for prospective applicability to all similar repairs or new construction of facilities within the applicant's jurisdiction. In such instances, the applicant shall be notified in writing by the Regional Director through the State of these prescribed standards and that any future damages or destruction of facilities due to failure to comply with such prescribed standards would not be eligible for FEMA grant assistance under section 402, except under unusual circumstances when approved in the public interest by the Associate Director.

(e) Local governments usually have the decision-making responsibility within their jurisdictions for hazard mitigation measures, including sound land-use regulations and safe construction practices. The State has the central role in resource management and in hazard mitigation throughout the State. Federal technical advice and assistance is supplementary in nature.

(f) FEMA recognizes the heavy administrative workloads of local and State governments in coping with major disasters or emergencies and, in initiating any hazard mitigation programs, it will be sensitive to these existing workloads. In developing any proposed implemenation plan and procedures, FEMA's emphasis is to focus the efforts of all participants on achieving positive results in hazard mitigation. It encourages initiative by State and local governments within the context of their laws, regulations, and customs.

(g) For all major disasters and emergencies involving actions or affecting in floodplains or wetlands appropriate hazard mitigation measures shall be taken as required by FEMA's Floodplain Management regulations (44 CFR Part 9).

(h) Nonstructural disaster protection methods or measures shall be fully considered and emphasized where consistent with primary program purposes of the Act.

(i) As a condition for any grant for federally assisted projects under section 402 of the Act, the Associate Director has prescribed as a standard, floodproofing measures which the Regional Director determines are appropriate and practicable as disasterproofing under E.O. 11988 for facilities within the 100-year floodplain or for critical facilities within the 500-year floodplain.

(j) During hazard mitigation actions involving water resources under this subpart, the State shall be the focal point for water resource management.

(k) As a condition for any grant or loan under the Act for municipal water supply or waste water treatment facilities or systems, appropriate water conservation requirements shall be included and any disincentives to water conservation shall be removed.

§ 205.403 Responsibilities.

(a) *General.* After a declaration of a major disaster or emergency coordinated effort of all participants is required to identify the significant hazards and appropriate mitigation measures to cope with those hazards.

(b) *FEMA.* The Regional Director shall include appropriate provisions for hazard mitigation under this subpart in the Federal/State Agreement. He/she shall coordinate with the Governor's Authorized Representative to provide for a joint Federal/State team to survey the disaster affected area soon after a major disaster or emergency declaration for these purposes:

(1) Identify significant hazards in the affected area, giving priority to disaster-related hazards;

(2) Evaluate the impacts of these hazards and measures which will mitigate these impacts; and

(3) Recommend appropriate hazard mitigation measures.

The Regional Director shall designate a FEMA staff member to serve as Hazard Mitigation Coordinator (HMC) on the FEMA/State survey team and to confer with local, State and Federal officials concerning these hazards and hazard mitigation measures. Based on these consultations by the FEMA HMC and the Regional Director, and on decisions by local or State agencies which may establish new or modified land use regulations or standards, the Regional Director may recommend that the Associate Director approve or prescribe appropriate standards. The Regional Director shall also designate a FEMA planner to serve on the FEMA/State planning team. Concurrently with the FEMA/State survey team activities, the FEMA planner shall coordinate with the State planner designated by the Governor's Authorized Representative in working with participating Federal, State, and local agencies, organizations or individuals in accomplishing hazard mitigation planning as required by the Regional Director in accordance with 44 CFR 205.403(e), 44 CFR 205.405, 44 CFR 205.410(b), and 44 CFR

205.411(c). The Regional Director may provide technical advice and assistance to local or State agencies for the purpose of accomplishing hazard mitigation activities under this subpart. He/she shall review State evidence of compliance with approved hazard mitigation activities and shall provide to the Associate Director an after-action report when all such hazard mitigation activities are completed or terminated. Because the Regional Director requires that each applicant take appropriate hazard mitigation measures as a condition for approval of a FEMA grant or loan, he/she shall follow up with the State to recover Federal funding whenever an applicant fails to satisfy any conditions upon which the approval of the grant was based. The Regional Director may arrange for other Federal agencies to participate in hazard mitigation activities under this subpart.

(c) *State.* The Governor's Authorized Representative is responsible for State performance of hazard mitigation activities under the Federal/State Agreement and this subpart. He/she shall designate a State Hazard Mitigation Coordinator (HMC) to serve on the FEMA/State survey team and a State planner to serve on the FEMA/State hazard mitigation planning team. The Governor's Authorized Representative shall arrange for State and local participation in FEMA/State surveys and FEMA/State planning in the affected areas of the State for the purposes stated above. The State HMC shall arrange for consultations on the findings and recommendations from the joint survey and shall follow up to assure that timely and adequate local and State hazard mitigation actions are taken. Whenever appropriate, he/she shall arrange for State funding or technical assistance to eligible applicants for the purposes of accomplishing State-approved hazard mitigation actions. He/she shall arrange for State inspection or audit to verify compliance with approved hazard mitigation measures. When these activities are completed in accordance with the Federal/State Agreement, he/she shall submit a final report of compliance with hazard mitigation requirements by State and local governments to the Regional Director for review and acceptance. Similarly, the State planner shall work with the FEMA planner in accomplishing the tasks referenced in paragraph (b) of this section.

(d) *Local.* The applicant is responsible for local performance of hazard mitigation measures under the Federal/State Agreement and this subpart. Each applicant shall designate a local Hazard Mitigation Coordinator (HMC) to work with the FEMA/State survey team as required by the State HMC. Working with the FEMA/State survey team, the local HMC will assess the damage within the local jurisdiction. The local HMC shall arrange for local participation in consultations with FEMA/State survey teams about hazard mitigation actions under this subpart. The local HMC is responsible for informing local officials and interested citizens about significant survey team activities. He/she shall also collect any local comments on these matters and report them to the State HMC.

With any project application, each applicant shall submit adequate assurances that any required hazard mitigation measures have been taken or will be completed. The applicant, to the extent of its legal authority, is responsible for implementing and enforcing land use regulations and safe construction practices which are conditions agreed upon for FEMA grants or loans. The applicant shall provide evidence of compliance with conditions for any approved FEMA grants or loans as required by the Governor's Authorized Representative. The applicant's local Authorized Representative shall also arrange for the applicant's planner to work with the FEMA/State planning team in reviewing and updating existing hazard mitigation plans, or in developing new hazard mitigation plans as may be scheduled by the Governor's Authorized Representative and requested by the Regional Director.

(e) *Federal/State agreement.* When necessary to clarify responsibilities under this subpart for a major disaster and emergency, clarification shall be provided by amendment to the Federal/State Agreement. The following is a typical paragraph:

Hazard Mitigation Clause Added to Federal-State Agreement

> The State agrees that, as a condition for any Federal loan or grant, the State or the applicant shall evaluate the natural hazards in the areas in which the proceeds of the grants or loans are to be used and shall make appropriate recommendations to mitigate such hazards for federally assisted projects. The State further agrees: (1) To follow up with applicants, within State capabilities, to assure that, as a condition for any grant or loan under the Act, appropriate hazard mitigation actions are taken; (2) to prepare and submit not later than 180 days after the declaration to the Regional Director for concurrence, hazard mitigation plan or plans for the designated areas, and (3) to review and update as necessary disaster-mitigation portions of the emergency plans.
>
> The Regional Director agrees to make Federal technical advice and assistance available to support the planning efforts and actions.

§ 205.404 Surveys.

(a) *Damage assessments.* Prior to a declaration of a major disaster or emergency, local, State and Federal preliminary assessments of damage may identify major hazards and opportunities for hazard mitigation actions. This information will be transmitted to the FEMA/State survey team as indicated below. During the period immediately following a major disaster or emergency, each applicant is expected to use its resources and capabilities as necessary to perform emergency work, such as debris removal or emergency measures to save lives, or to protect public health and safety or to protect property. The identification of hazards by the damage assessment team and the performance of the emergency work may result in significant hazard mitigation. Damage Survey Reports (DSR) (see 44 CFR 205.114(d)) completed by Federal inspectors will also include identification of hazards and recommendations of mitigation measures to be incorporated in the repair work.

(b) *Survey activities.* After a declaration of a major disaster or emergency, the Governor's Authorized Representative shall schedule a briefing for State staff members about their participation in FEMA/State survey team activities.

The survey team shall be made up of the FEMA HMC and the State HMC, plus other Federal or State staff members or consultants. This FEMA/State survey team shall work with the appropriate local HMC. Utilizing the information from the preliminary damage assessments, the DSR's referred to above, and all other pertinent information readily available, the survey team shall visit the sites of significant damage to evaluate the hazards. This evaluation may include investigation of selected individual damaged facilities plus review of applicable land use regulations, construction standards, and other appropriate hazard mitigation measures. The Federal/State survey team shall work with the local HMC and other local officials as necessary during this evaluation. The FEMA HMC shall supply model regulations, suggested standards, and other pertinent references for use by the survey team. For each identified significant hazard the survey team shall include appropriate recommendations of hazard mitigation measures in its final report (see 44 CFR 205.411(c)).

§ 205.405 Hazard mitigation plans.

(a) *Plans.* For each hazard-prone area, the FEMA/State planning team shall review and evaluate existing local or State emergency plans for hazard mitigation. Particular attention shall be given to the adequacy of plans for warning and evacuation. In those cases where no such plans exist, this planning team shall report its findings and recommendations concerning specific needs to develop and maintain such plans. The Regional Director shall require the State to update existing State or local plans or to develop such new hazard mitigation plans as he/she deems necessary in consultation with the Governor's Authorized Representative. In determining whether to impose such a requirement on a local government, consideration shall be given to the opportunities presented for effective hazard mitigation, the size and composition of the local government, the local government's authority to regulate land use and to require safe construction practices, and the local government's exercise of such authority. The Governor's Authorized Representative, or Regional Director, may provide technical advice and assistance to State agencies or local governments in developing new plans or updating existing plans to mitigate hazards identified as the result of the major disaster or emergency within the affected areas.

(b) *Objectives.* The identification of hazards following a major disaster or emergency and accomplishment of appropriate hazard mitigation measures are the short-term planning objectives to be required by the Federal/State Agreement. The Regional Director and the Governor's Authorized Representative shall focus with highest priority on these objectives in verifying compliance with the Agreement as a condition for Federal loans or grants.

(c) *Mapping.* The FEMA/State planning team shall verify the impact of the major disaster on disaster frequencies computed prior to the major disaster through contacts with agencies maintaining such records. This planning team shall also consider the advisability of redefining boundaries of high-hazard areas as the result of their findings and shall make recommendations to the Regional Director on any needs for new mapping or remapping of high hazard areas.

(d) *Schedules.* In its recommendations of appropriate hazard mitigation measures, the planning team shall suggest target dates and schedules for accomplishment of each recommended measure.

(e) Measures which relate only to specific construction projects shall be specified as conditions for approval of applicable FEMA grants or loans. Those hazard mitigation measures which require other actions by applicants for FEMA grants of loans shall be reported by the FEMA/State survey team to the Governor's Authorized Representative, for referral to the FEMA/State planning team or other appropriate action.

§ 205.406 Hazard mitigation measures.

(a) *General.* Certain types of actions may be taken to achieve hazard mitigation including:

(1) Avoidance,

(2) Reduction, and

(3) Adoption and enforcement of land use regulations and of safe construction practices.

(b) *Avoidance.* For siting new construction of facilities or structures, location outside of high hazard areas is the preferred solution. For each hazard identified following a major disaster or emergency, the survey team shall assess the feasibility of avoidance of high hazard areas in cases where new construction, alteration, or major repairs are involved in restoration of damaged or destroyed facilities. The survey team shall also make specific recommendations concerning land use regulations and rezoning to achieve the objectives of avoidance whenever appropriate.

(c) *Reduction.* Reduction of the effects of hazards on facilities and people may be achieved by reducing the area or level of the hazard itself or by reducing the impact of the hazard on individual facilities. Examples of the first are flood control projects such as dams, levees, floodwalls or channel improvements. In some situations, these may be the only practicable measures to protect facilities or structures already located in the floodplain. Reducing the impact on a facility may be accomplished by such measures as installing shearwalls or bracing in buildings or installing check valves in utility lines in earthquake-prone areas. In flood-prone areas, tie downs may be used for mobile homes, lower levels of building may be waterproofed, water damage resistant materials may be used in reconstruction, or such lower levels may be restricted to nonhazardous uses.

§ 205.407 Land use regulations.

(a) *Local zoning.* Regulation of land use within its jurisdiction is normally a function of local government. In some cases, the local government may have already adopted land use regulations or zoning prior to a major disaster or emergency. Modification or updating based on current maps and model regulations may be necessary. Some re-mapping may frequently be required. In certain cases, the existing land use regulation may be adequate to cope with the identified hazards, if properly enforced. State, Federal, or private interests may propose model zoning regulations, but adoption and enforcement of such regulations remain with the responsible State or local government. Certain State or Federal restrictions may be locally adopted and enforced by mutual agreement, or as a condition for certain types of financial assistance. The survey team shall make its recommendations based on field observations and evaluation of hazards within the affected areas. Consultations with the applicant, the State HMC, and the FEMA HMC may then be necessary to identify the applicant's options for decisionmaking. The State or FEMA HMC shall provide encouragement, technical advice, and assistance to the applicant to adopt and enforce appropriate land use regulations. The FEMA/State planning team shall follow up on contacts with the State or local government if appropriate.

(b) *State land use regulations.* For State-owned properties outside of local jurisdictions, the responsible State agency adopts and enforces land use regulations. In some cases, these State regulations may serve as model regulations for local governments. The planning team may make recommendations on new State land use regulations for State lands and provide technical advice and assistance to the State for developing such regulations. The State may require local adoption of Statewide land use regulations as a condition for State aid, such as grants, loans, or technical assistance.

(c) *Federal land use regulations.* For federally owned lands outside of local or State jurisdictions, the responsible Federal agency adopts and enforces land use regulations which may serve as models for local or State regulations in like circumstances. The FEMA/State planning team may encourage the Federal agency to adopt land-use regulations currently used locally as being applicable to the Federal property. A Federal agency may require local or State governments to adopt and enforce certain hazard mitigation regulations as a condition for Federal assistance or participation in federally assisted programs. For example, the National Flood Insurance Program requires certain minimum floodplain management regulations for participation by State or local government. Executive Order 11988 also imposes additional constraints on Federal grants or loan assistance within the floodplains. After reviewing a project application in accordance with FEMA's Floodplain Management regulations (44 CFR Part 9), the Regional Director may determine that no practicable alternative to locating in the floodplain exists. The Regional Director then shall require appropriate measures to minimize harm to the facility, to other property and to the floodplain and to preserve and restore the natural and beneficial values of the floodplain. Non-structural uses of floodplains and wetlands, such as open space and parks, shall be encouraged whenever practicable. Coastal zone management plans impose similar requirements for local, State, and Federal floodplain management regulation. As model hazard mitigation regulations become available to cope with other types of major disasters or emergencies including earthquakes, windstorms, and fires, the survey team may recommend them as requirements for federally assisted projects, or for adoption and enforcement by applicants for Federal grant or loan assistance. Survey or planning teams shall make findings and recommendations as appropriate for development or updating of model hazard-mitigation regulations by various Federal agencies for mitigation of hazards identified following a major disaster or emergency. The FEMA planner may arrange for Federal technical advice and assistance to local or State governments in modifying model land use regulations to satisfy local requirements.

(d) *FEMA land use standards.* As the result of a major disaster or emergency, the Regional Director may determine that there is no practicable alternative to permitting approval of a grant or loan for an action within a high hazard area. For example, refer to 44 CFR Part 9 covering the eight-step decisionmaking process for floodplain management. In those cases where a practicable alternative exists outside the base floodplain, the Regional Director shall decline to approve a FEMA grant or loan unless the facility or structure is relocated. The Regional Director may take similar action for other types of disasters, such as tornadoes or earthquakes, where a practicable alternative exists outside the high hazard area. Under the Act, the Associate Director may prescribe appropriate standards as applicable for FEMA assisted projects as the result of a major disaster or emergency, as discussed in 44 CFR 205.402(d). When the Regional Director determines that restoration of a damaged or destroyed facility in a hazard area is not a practicable alternative, he/she may decline to authorize FEMA disaster assistance to restore facilities at the original site, or within the hazard area where such facilities are subject to repetitive heavy damages or destruction. When an applicant decides to relocate facilities being restored under section 402 of the Act outside of a high hazard area, purchase and development of the site is the applicant's responsibility. The Regional Director may approve Federal grant assistance for permanent restoration of eligible facilities erected on the new site: *Provided, That* the Regional Director determines that the Federal grant assistance for such project is practicable and in the public interest.

§ 205.408 Construction practices.

(a) *General.* In certain cases, permanent repairs, alterations, or new construction to predisaster design may not provide usable facilities or structures safe from identified hazards. Alternate actions available are relocation; restorative work to conform to updated safe construction practices; or no approval for Federal funding of the proposed work. For FEMA-assisted projects under the Act, the applicant's decision on standards for restorative work shall be subject to review and approval by the Governor's Authorized Representative and the Regional Director. In identifying hazards and in its damage evaluation, the survey team shall inventory existing construction practices or standards related to damaged or destroyed facilities and may recommend adoption and enforcement by each applicant of additional safe construction practices.

(b) *Local standards.* When a major disaster or emergency occurs, the FEMA/State survey team shall inventory and evaluate the standards already adopted by the applicants for the types of repairs, reconstruction, or restorative work for which Federal grant or loan assistance is being requested. During the field surveys this team, or the FEMA/State planning team may also have model State or Federal standards available for consideration by the applicants. Such standards for new construction may be different from those for repairs or alterations to existing facilities or structures. Federal or State agencies may provide technical advice and assistance to local governments, particularly in the form of model standards to be modified for local use. In discussions of hazard mitigation measures, the survey team or the planning team may develop appropriate recommendations to the applicant for updating existing standards, or for adopting new ones. As the result of the major disaster or emergency, each applicant has the responsibility for adopting or updating appropriate standards and for enforcing them. Such local action for nonfederally funded projects shall be encouraged by the survey team and the planning team working together for a common purpose. An applicant may request State or FEMA technical advice and assistance in taking these actions. A new standard which the applicant submits for approval by the Associate Director shall include the scope of application of the standard; that is, whether the standard covers all public facilities or certain federally funded projects only. The standard shall also be accompanied by a description of local or State enforcement procedures.

(c) *State standards.* For State-owned buildings, structures, or facilities outside local jurisdictions, the responsible State agency adopts and enforces applicable standards. In some cases these may serve as a model for similar action by local governments. As a condition for State approval of grant or loan assistance as the result of a major disaster or emergency, the Governor's Authorized Representative may recommend to the Regional Director that the Associate Director prescribe certain standards for the FEMA-assisted project for hazard mitigation purposes. The State HMC may also provide technical advice and assistance on hazard mitigation measures to applicants, private organizations, and individuals.

(d) *Federal standards.* (1) For federally owned buildings, structures, or facilities outside local or State jurisdictions, the responsible Federal agency adopts and enforces applicable Federal standards. These may serve as models for local or State adoption and enforcement in similar circumstances.

(2) The National Flood Insurance Program (NFIP) prescribes certain Federal standards for repairs, alterations, and new construction within floodplains as a condition for acceptance of a flood-prone community within that program. The Associate Director has prescribed as a standard, floodproofing measures which are appropriate as disaster proofing and practicable under E.O. 11988 for facilities within the 100-year floodplain or for critical facilities within the 500-year floodplain. For other types of disasters, similar standards for hazard mitigation may be available and appropriate for local, State and Federal use.

(3) The FEMA/State survey team, and the planning team, shall be aware of existing standards and shall recommend appropriate examples to applicants for consideration as hazard mitigation related to the major disaster or emergency.

(e) *FEMA standards.* Working with the State and applicants, through the survey team and the planning team, the Regional Directors shall encourage local adoption and enforcement on all projects, including non-federally assisted projects, of appropriate standards for hazard mitigation. When a local or State government takes such action, the Regional Director may recommend that the Associate Director approve such standards as applicable for FEMA-assisted projects, after appropriate consultations within FEMA, with local and State officials, and with appropriate elected officials of general purpose local governments. Based on these consultations and all available information, the Associate Director may approve such standards as deviations applicable to FEMA assisted projects. When the local or State government declines to adopt and to enforce them for non-FEMA-assisted projects, the Associate Director, after appropriate FEMA, State and local consultations, may prescribe appropriate standards which are applicable only to FEMA assisted projects. Refer also to 44 CFR 205.402(d). The Regional Director may then approve FEMA grant or loan assistance to enable the applicant to comply with them on FEMA assisted projects. The Regional Director may suspend or refuse to approve any project application until he/she is satisfied that the approved work will result in a facility or structure safe and usable for the predisaster function, or for alternate functions proposed as flexible funding by the applicant in accordance with these regulations. (See 44 CFR Part 205 Subpart H for an explanation of funding options.)

§ 205.409 Consultations.

(a) *General.* It is the intent of these regulations to provide opportunity for State and local officials and interested individuals to participate in the hazard mitigation process. At various points in the process, consultations and meetings with the FEMA/State survey team or planning team will provide input from these sources as detailed in the following paragraphs.

(b) *Survey team.* Members of the survey team shall make frequent contacts and have consultations with various applicants until the field surveys are completed and appropriate hazard mitigation measures are recommended. The State HMC is responsible under the Federal/State Agreement to arrange for appropriate consultations and notices to inform the public on those decisionmaking processes involved in the work of the survey team.

An applicant or the FEMA HMC may request such arrangements when desired.

(c) *Planning team.* Similarly, members of the FEMA/State planning team, in coordination with the survey team, shall make contacts and have consultations with various applicants or their planners as the planning team may require to accomplish its assigned tasks.

(d) *Meetings.* After the declaration of a major disaster or emergency, the Governor's Authorized Representative, in coordination with the Regional Director, schedules one or more meetings with local and State officials representing potential applicants for Federal assistance. These are generally known as "Applicant's Briefings". At these meetings FEMA and State staff members brief these local and State officials on FEMA policies and procedures for Federal grant or loan assistance under the Act. The Governor's Authorized Representative may arrange for the survey team and the planning team to participate in these briefings when desirable. The FEMA/State survey team and the planning team will normally schedule followup meetings later to discuss hazard mitigation measures with State and local officials. When necessary under FEMA's regulations pertaining to floodplain management and environmental review (44 CFR Parts 9 and 10) early public notice may be given of pending Federal actions. Based on the responses to such public notice, or when otherwise appropriate, the Regional Director may request the Governor's Authorized Representative to schedule public hearings for purposes of consultation with interested parties on hazard mitigation measures or problems.

(e) *Project management.* Normal FEMA procedures for damage survey reports, project applications, final inspections, audits, and final payments require local, State, and Federal contacts and coordination. Appeal procedures provide for further reviews and consultations of all interested parties including the Associate Director and his/her staff. These procedures provide documentation to support the hazard mitigation measures taken under section 406 of the Act.

§ 205.410 Compliance.

(a) *Federal/State agreement.* Requirements for evidence of compliance may vary for each major disaster or emergency depending on its nature, severity, and magnitude as well as on variations in the resources, capabilities, organization, and staffing of the local and State governments. Any specific requirement for State evidence of compliance with hazard mitigation measures may be spelled out in the Federal/State Agreement.

(b) *Plans.* Review and acceptance of hazard mitigation plans submitted by the applicant or by the State in accordance with the Federal/State Agreement provides the Governor's Authorized Representative in coordination with the Regional Director opportunities to schedule spot inspections, audits, and follow-up consultations. Through these activities, compliance with hazard mitigation objectives, schedules, and commitments may be verified.

(c) *Project administration.* As a condition for approval of a project application, and subsequently for approval of a voucher for final payment, the Governor's Authorized Representative and the Regional Director shall require documentation of required hazard mitigation measures, including compliance with applicable land use regulations or construction standards. In making Final Inspection Reports, Federal and State inspectors shall be specifically asked to verify compliance by the applicant with approved hazard mitigation standards. Similarly, auditors shall be required to verify such compliance in their audit reports.

(d) *Reporting.* The Regional Director may specify in the Federal/State Agreement that the State provide reports of compliance with approved hazard mitigation plans or actions. The Governor's Authorized Representative may also require such progress reports from each applicant or he/she may submit one comprehensive report when scheduled. Prior to termination of the Federal/State Agreement, the Governor's Authorized

Representative shall submit a final report of compliance with hazard mitigation requirements by State and local governments to the Regional Director for review and acceptance.

§ 205.411 Evaluation.

(a) *Critiques.* If requested by the Regional Director, the Governor's Authorized Representative shall arrange for a special critique of hazard mitigation plans and actions as the result of the major disaster or emergency. Each applicant shall be notified of the critique and may be invited to participate. As an alternative, a critique of hazard mitigation plans and actions may be scheduled to be covered at the FEMA/State critique covering all disaster assistance activities as the result of the major disaster or emergency.

(b) *Final survey team report.* Prior to terminating the survey team activities, the FEMA HMC and State HMC shall prepare a joint report of their activities and recommendations to the Governor's Authorized Representative and to the Regional Director.

(c) *Final planning team report.* Upon completion of its assigned mission, as discussed in 44 CFR 205.405, the FEMA/State planning team shall make a final report of its activities, findings and recommendations to the Regional Director through the Governor's Authorized Representative. This final report shall specifically identify any remaining planning requirements for hazard mitigation as the result of the major disaster or emergency requiring State or FEMA followup.

(d) *Follow-up actions.* The Regional Director shall review the reports from the survey team and the planning team plus the report of compliance from the Governor's Authorized Representative. The Regional Director's report to the Associate Director shall focus on the positive results achieved through hazard mitigation plans and actions as the result of the major disaster or emergency. He/She also shall provide in the report specific findings and recommendations for Federal follow-up action which should be taken after termination of the Federal/State Agreement to provide mitigation of such hazards as the result of future disasters. The Associate Director may then arrange for appropriate Federal action as the result of each such recommendation.

Subpart N—Implementation of Coastal Barrier Resources Act

SOURCE: 50 FR 38526, Sept. 23, 1985, unless otherwise noted.

§ 205.501 Purpose of subpart.

This subpart implements the Coastal Barrier Resources Act (CBRA) (Pub. L. 97-348) as the Act applies to disaster relief granted to individuals and State and local governments under the Disaster Relief Act of 1974 (Pub. L. 93-288). CBRA prohibits new expenditures and new financial assistance within the Coastal Barrier Resources System (CBRS) for all but a few types of activities identified in CBRA. This subpart specifies what actions may and may not be carried out within the CBRS. It establishes procedures for compliance with CBRA in the administration of disaster assistance by FEMA.

§ 205.502 Policy.

It shall be the policy of FEMA to achieve the goals of CBRA in carrying out disaster relief on units of the Coastal Barrier Resources System. It is FEMA's intent that such actions be consistent with the purpose of CBRA to minimize the loss of human life, the wasteful expenditure of Federal revenues, and the damage to fish, wildlife and other natural resources associated with coastal barriers along the Altantic and Gulf coasts and to consider the means and measures by which the long-term conservation of these fish, wildlife, and other natural resources may be achieved under Pub. L. 93-288.

§ 205.503 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in Part 205 of Subchapter D are applicable to this subject.

(a) "Consultation" means that process by which FEMA informs the Secretary of the Interior through his/her designated agent of FEMA proposed disaster assistance actions on a designated unit of the Coastal Barrier Resources System and by which the Secretary makes comments to FEMA about the appropriateness of that action. Approval by the Secretary is not required in order that an action be carried out.

(b) "Essential link" means that portion of a road, utility, or other facility originating outside of the system unit but providing access or service through the unit and for which no alterative route is reasonably available.

(c) "Existing facility" on a unit of the CBRS established by Pub. L. 97-348 means a publicly owned or operated facility on which the start of construction took place prior to October 18, 1982, and for which this fact can be adequately documented. In addition, a legally valid building permit or equivalent documentation, if required, must have been obtained for the construction prior to October 18, 1982. If a facility has been substantially improved or expanded since October 18, 1982, it is not an existing facility. For any other unit added to the CBRS by amendment to Pub. L. 97-348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

(d) "Expansion" means changing a facility to increase its capacity or size.

(e) "Facility" means "public facility" as defined in § 205.2(a)(16). This includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; and non-Federal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational or recreational purposes or any park.

(f) "Financial assistance" means any form of Federal loan, grant guaranty, insurance, payment rebate, subsidy or any other form of direct or indirect Federal assistance.

(g) "New financial assistance" on a unit of the CBRS established by Pub. L. 97-348 means an approval by FEMA of a project application or other disaster assistance after October 18, 1982. For any other unit added to the CBRS by amendment to Pub. L. 97-348, the enactment date of such amendment is substituted for October 18, 1982, in this definition.

(h) "Start of construction" for a structure means the first placement of permanent construction such as the pouring of slabs or footings or any work beyond the stage of excavation. Permanent construction for a structure does not include land preparation such as clearing, grading, and filling, nor does it include excavation for a basement, footings, or piers. For a facility which is not a structure, start of construction means the first activity for permanent construction of a substantial part of the facility. Permanent construction for a facility does not include land preparation such as clearing and grubbing but would include grading and filling such as for a road.

(i) "Structure" means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a mobile home.

(j) "Substantial improvement" means any repair, reconstruction or other improvement of a structure or facility, that has been damaged in excess of, or the cost of which equals or exceeds, 50 percent of the market value of the structure or replacement cost of the facility (including all "public facilities" as defined in the Disaster Relief Act of 1974) either:

(1) Before the repair or improvement is started, or

(2) If the structure or facility has been damaged and is proposed to be restored, before the damage occurred. If a facility is a link in a larger system, the percentage of damage will be based on the relative cost of repairing the damaged facility to the replacement cost of that portion of the system which is operationally dependent on the facility. The term "substantial improvement" does not include any alteration of a structure or facility listed on the National Register of Historic Places or a State Inventory of Historic Places.

(k) "System Unit" means any undeveloped coastal barrier, or combination of closely related undeveloped coastal barriers included within the Coastal Barrier Resources System as established by section 4 of the CBRA.

or as modified by the Secretary in accordance with the Act.

§ 205.504 Scope.

(a) The limitations on disaster assistance as set forth in this subpart apply only to FEMA actions taken on a unit of the Coastal Barrier Resources System or any conduit to such unit, including but not limited to a bridge, causeway, utility, or similar facility.

(b) FEMA assistance having a social program orientation which is unrelated to development is not subject to the requirements of these regulations. This assistance includes:

(1) Individual and Family Grants that are not for acquisition or construction purposes;

(2) Crisis counseling;

(3) Legal assistance; and

(4) Disaster unemployment assistance.

§ 205.505 Limitations on Federal expenditures.

Except as provided in §§ 205.506 and 205.507, no new expenditures or financial assistance may be made available under authority of Pub. L. 93-288 for any purpose within the Coastal Barrier Resources System, including but not limited to:

(a) Construction, reconstruction, replacement, repair or purchase of any structure, appurtenance, facility or related infrastructure;

(b) Construction, reconstruction, replacement, repair or purchase of any road, airport, boat landing facility, or other facility on, or bridge or causeway to, any System unit; and

(c) Carrying out of any project to prevent the erosion of, or to otherwise stabilize, any inlet, shoreline, or inshore area, except that such assistance and expenditures may be made available on units designated pursuant to section 4 on maps numbered S01 through S08 for purposes other than encouraging development and, in all units, in cases where an emergency threatens life, land, and property immediately adjacent to that unit.

§ 205.506 Exceptions.

The following types of disaster assistance actions are exceptions to the prohibitions of § 205.505.

(a) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for:

(1) Maintenance replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, structures, or facilities that are essential links in a larger network or system;

(2) Repair of any facility necessary for the exploration, extraction, or transportation of energy resources which activity can be carried out only on, in, or adjacent to coastal water areas because the use or facility requires access to the coastal water body; and

(3) Maintenance of existing channel improvements and related structures, such as jetties, and including the disposal of dredge materials related to such improvements.

(b) After consultation with the Secretary of the Interior, the FEMA Regional Director may make disaster assistance available within the CBRS for the following types of actions, provided such assistance is consistent with the purposes of CBRA:

(1) Emergency actions essential to the saving of lives and the protection of property and the public health and safety, if such actions are performed pursuant to sections 305 and 306 of the Disaster Relief Act of 1974 and are limited to actions that are necessary to alleviate the emergency;

(2) Maintenance, replacement, reconstruction, or repair, but not the expansion, of publicly owned or publicly operated roads, strucutres, or facilities, except as provided in this part at § 205.508(c)(5);

(3) Repair and maintenance of air and water navigation aids and devices, and of access thereto;

(4) Repair of facilities for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications;

(5) Repair of facilities for the study, management, protection and enhancement of fish and wildlife resources and habitats, including but not limited to, acquisition of fish and wildlife habi-

tats and related lands, stabilization projects for fish and wildlife habitats, and recreational projects; and

(6) Repair of nonstructural projects for shoreline stabilization that are designed to mimic, enhance, or restore natural stabilization systems.

§ 205.507 Applicability to disaster assistance.

(a) *Emergency assistance.* The Regional Director may approve assistance pursuant to sections 305 or 306 of Pub. L. 93-288 for emergency actions which are essential to the saving of lives and the protection of property and the public health and safety, are necessary to alleviate the emergency, and are in the public interest. Such actions include but are not limited to:

(1) Removal of debris from public property;

(2) Emergency protective measures to prevent loss of life, prevent damage to improved property and protect public health and safety;

(3) Emergency restoration of essential community services such as electricity, water or sewer;

(4) Restoration of access to private property;

(5) Provision of emergency shelter by means of providing emergency repair of utilities, provision of heat in the season requiring heat, provision of safe water supply, provision of minimal cooking facilities, or provision of access to a private residence;

(6) Relocation of individuals or property out of danger, such as moving a mobile home to an area outside of the CBRS (but disaster assistance funds may not be used to relocate facilities back into the CBRS);

(7) Minimal repairs to private owner-occupied primary residences to make them habitable;

(8) Housing eligible families in existing resources in the CBRS; and

(9) Mortgage and rental payment assistance.

(b) *Permanent restoration assistance.* Subject to the limitations set out below, the Regional Director may approve assistance for the repair, reconstruction, or replacement but not the expansion of publicly owned or operated facilities and certain private nonprofit facilities. Such actions, which are subject to these regulations, include but are not limited to the repair, reconstruction, or replacement of:

(1) Roads and bridges;

(2) Drainage structures, dams, levees;

(3) Buildings and equipment;

(4) Utilities (gas, electricity, water, etc.); and

(5) Park and recreational facilities.

§ 205.508 Requirements.

(a) *Location determination.* For each disaster assistance action which is proposed on the Atlantic or Gulf Coasts the Regional Director shall:

(1) Review a proposed action's location to determine if the action is on or connected to the CBRS unit and thereby subject to these regulations. The appropriate Department of Interior map identifying units of the CBRS will be the basis of such determination. The CBRS units are also identified on FEMA Flood Insurance Rate Maps (FIRM's) for the convenience of field personnel.

(2) If an action is determined *not* to be on or connected to a unit of the CBRS, no further requirements of these regulations need to be met, and the action may be processed under other applicable disaster assistance regulations.

(3) If an action is determined to be on or connected to a unit of the CBRS, it is subject to the consultation and consistency requirements of CBRA as prescribed in §§ 205.509 and 205.510.

(b) Emergency disaster assistance. For each emergency disaster assistance action listed in § 205.507(a), the Regional Director shall perform the required consultation. CBRA requires that the Agency consult with the Secretary of the Interior before taking any action on a System unit. The purpose of such consultation is to solicit advice on whether the action is or is not one which is permitted by section 6 of CBRA and whether the action is or is not consistent with the purposes of the Act as defined in section 1 of CBRA.

(1) FEMA has conducted advance consultation with the Department of the Interior concerning such emergen-

cy actions. The result of the consultation is that the Secretary of the Interior through the Assistant Secretary for Fish and Wildlife and Parks has concurred that the emergency work listed in § 205.507(a) is consistent with the purposes of CBRA and may be approved by FEMA without additional consultation.

(2) *Notification.* As soon as practicable, the Regional Director will notify the designated Department of the Interior representative at the regional level of emergency projects that have been approved. Upon request from the Secretary of the Interior, the Associate Director, SLPS, or his or her designee will supply reports of all current emergency actions approved on CBRS units. Notification will contain the following information:

(i) Identification of the unit in the CBRS;

(ii) Description of work approved;

(iii) Amount of Federal funding; and

(iv) Additional measures required.

(c) *Permanent restoration assistance.* For each permanent restoration assistance action including but not limited to those listed in § 205.507(b), the Regional Director shall meet the requirements set out below.

(1) *Essential links.* For the repair or replacement of publicly owned or operated roads, structures or facilities which are essential links in a larger network or system:

(i) No facility may be expanded beyond its predisaster design.

(ii) Consultation in accordance with § 205.509 shall be accomplished.

(2) *Channel improvements.* For the repair of existing channels, related structures and the disposal of dredged materials:

(i) No channel or related structure may be repaired, reconstructed, or replaced unless funds were appropriated for the construction of such channel or structure before October 18, 1982;

(ii) Expansion of the channel or related structures beyond predisaster design is not permitted;

(iii) Consultation in accordance with § 205.509 shall be accomplished.

(3) *Energy Facilities.* For the repair of facilities necessary for the exploration, extraction or transportation of energy resources:

(i) No such facility may be repaired, reconstructed, or replaced unless such function can be carried out only in, on, or adjacent to a coastal water area because the use or facility requires access to the coastal water body;

(ii) Consultation in accordance with § 205.509 shall be accomplished.

(4) *Special-purpose facilities.* For the repair of facilities used for the study, management, protection or enhancement of fish and wildlife resources and habitats and related recreational projects; air and water navigation aids and devices and access thereto; and facilities used for scientific research, including but not limited to aeronautical, atmospheric, space, geologic, marine, fish and wildlife and other research, development, and applications; and, nonstructural facilities that are designed to mimic, enhance, or restore natural shoreline stabilization systems:

(i) Consultation in accordance with § 205.509 shall be accomplished;

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 205.510.

(5) *Other public facilities.* For the repair, reconstruction, or replacement of publicly owned or operated roads, structures, or facilities that do not fall within the categories identified in paragraphs (c) (1), (2), (3), or (4) of this section:

(i) No facility may be repaired, reconstructed, or replaced unless it is an "existing facility";

(ii) Expansion of the facility beyond its predisaster design is not permitted;

(iii) Consultation in accordance with § 205.509 shall be accomplished;

(iv) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 205.510.

(6) *Private nonprofit facilities.* For eligible private nonprofit facilities as defined in these regulations (44 CFR 205.70 et seq.) and of the type described in paragraphs (c) (1), (2), (3), or (4) of this section:

(i) Consultation in accordance with § 205.509 shall be accomplished.

(ii) No such facility may be repaired, reconstructed, or replaced unless it is otherwise consistent with the purposes of CBRA in accordance with § 205.510.

(7) *Grant-in-lieu.* A grant-in-lieu may not be made for a facility in the CBRS if such grant is to be combined with other funding, resulting in an expansion of the facility beyond the predisaster design. If a facility is exempt from the expansion prohibitions of CBRA by virtue of falling into one of the categories identified in paragraph (c) (1), (2), (3), or (4) of this section, then a grant-in-lieu for such facilities is not precluded.

(8) *Flexible funding.* A new or enlarged facility may not be constructed on a unit of the CBRS under the flexible funding provisions of section 402(f) or section 419 of Pub. L. 93-288 unless the facility is exempt from the expansion prohibition of CBRA by virtue of falling into one of the categories identified in paragraph (c) (1), (2), (3), or (4) of this section.

[50 FR 38526, Sept. 23, 1985; 50 FR 39675, Sept. 30, 1985]

§ 205.509 Consultation.

As required by section 6 of CBRA, the FEMA Regional Director will consult with the designated representative of the Department of the Interior (DOI) at the regional level before approving any action involving permanent restoration of a facility or structure on or attached to a unit of the CBRS.

(a) The consultation shall be by written memorandum to the DOI representative and shall contain the following:

(1) Identification of the unit within the CBRS;

(2) Description of the facility and the proposed repair or replacement work; including identification of the facility as an exception under section 6 of CBRA; and full justification of its status as an exception;

(3) Amount of proposed Federal funding;

(4) Additional mitigation measures required; and

(5) A determination of the action's consistency with the purposes of CBRA, if required by these regulations, in accordance with § 205.510.

(b) Pursuant to FEMA understanding with DOI, the DOI representative will provide technical information and provide an opinion on whether or not the action meets the criteria for an exception, and on the consistency of the action with the purposes of CBRA when such consistency is required. DOI is expected to respond within 12 working days from the date of the FEMA request for consultation. If a response is not received within the time limit, the FEMA Regional Director shall contact the DOI representative to determine if the request for consultation was received in a timely manner. If it was not, an appropriate extension for response will be given. Otherwise, he or she may assume DOI concurrence and proceed with approval of the proposed action.

(c) For those cases in which the regional DOI representative believes that the proposed action should not be taken and the matter cannot be resolved at the regional level, the FEMA Regional Director will submit the issue to the FEMA Assistant Associate Director for Disaster Assistance Programs (DAP). In coordination with the Office of General Counsel (OGC), consultation will be accomplished at the FEMA National Office with the DOI consultation officer. The comments of the DOI consultation officer will be carefully considered before the Assistant Associate Director, DAP, determines whether or not to approve the proposed action.

§ 205.510 Consistency determinations.

Section 6(a)(6) requires that certain actions be consistent with the purposes of CBRA if they are to be carried out on a unit of the CBRS. The purpose of CBRA as stated in section 2(b) is to minimize the loss of human life, wasteful expenditure of Federal revenues, and the damage to fish, wildlife, and other natural resources associated with the coastal barriers along the Atlantic and Gulf coasts. For those actions where a consistency determination is required the FEMA Regional Director shall evaluate the action according to the following procedure, and it shall be included in the written request for consultation with DOI.

(a) *Impact identification.* FEMA shall identify impacts of the following types that would result from the proposed action:

(1) Risks to human life;

(2) Risks of damage to the facility being repaired or replaced;

(3) Risks of damage to other facilities;

(4) Risks of damage to fish, wildlife, and other natural resources;

(5) Condition of existing development served by the facility and the degree to which its redevelopment would be encouraged; and

(6) Encouragement of new development.

(b) *Mitigation.* FEMA shall modify actions by means of practicable mitigation measures to minimize adverse effects of the types listed in paragraph (a) of this section.

(c) *Conservation.* FEMA shall identify practicable measures that can be incorporated into the proposed action and will conserve natural and wild life resources. The Regional Director may require such measures at the expense of the applicant if they are not otherwise eligible for FEMA funding.

(d) *Finding.* For those actions required to be consistent with the purposes of CBRA, the above evaluation must result in a finding of consistency with CBRA by the Regional Director before funding may be approved for that action.

PARTS 206–221 [RESERVED]

PART 222—SUPERFUND COST SHARE ELIGIBILITY CRITERIA FOR PERMANENT AND TEMPORARY RELOCATION

Sec.

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AUTHORITY: Reorganization Plan Number 3 of 1978; 42 U.S.C. 9601 et seq.; Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510; Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499; EO 12580, Superfund Implementation.

SOURCE: 52 FR 6800, Mar. 5, 1987, unless otherwise noted.

§ 222.1 Purpose.

This part prescribes the criteria to be followed by the Federal Emergency Management Agency (FEMA), or any state acting on its behalf when implementing cost sharing under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), *as amended*, also known as Superfund.

§ 222.2 Definitions.

(a) "Acceptable contributions" means either cash (or its equivalent, appropriated funds) or the value of contributions of goods, facilities or services, or combinations of these, that can qualify for and meet matching share requirements.

(b) "Allowable costs" means those eligible, reasonable and necessary, costs which are permitted under the appropriate Federal cost principles, in accordance with FEMA policy, within the scope of the project, authorized for FEMA participation and in accordance with OMB Circular A-87, Cost Principles for State and Local Governments.

(c) "Cash contributions" means the recipient's (state or local government) cash outlay, including the outlay of money contributed to the recipient by other public agencies, institutions, private organizations, and individuals.

(d) "Cost share" means that portion of the allowable project cost which is not derived from Federal assistance.

(e) "Value" is the cost to the state for services and facilities or goods.

§ 222.3 Program intent.

(a) This regulation is intended to provide criteria with regard to the states' allowable costs associated with the administration of temporary and permanent relocation activities under CERCLA. CERCLA section 104(c)(3), as amended, states that the state will pay or assure payment of (1) 10 per centum of the costs of the remedial action, including all future maintenance or, (2) 50 per centum (or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the state or political subdivision for the release) of any sums expended in response to a release at a facility that was operated by the state or a political subdivision thereof, either directly, or through a contractual relationship or otherwise at the time of any disposal of hazardous substances therein. The Federal Government will pay 90 per centum under (a)(1) and 50 per centum or less under (a)(2).

(b) FEMA will determine, based on policy determinations with prospective effect, applying the criteria set out in §§ 222.4 and 222.5, the eligibility of any matching contributions not covered by this regulation. Expenditures and other actions must be in compliance with applicable FEMA/State cooperative agreements, contracts, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (Uniform Regulations), relocation plans, relocation criteria, and OMB Circular A-87, Cost Principles for State and Local Governments. FEMA and the state shall maintain adequate records of its acquisition and relocation activities in sufficient detail to demonstrate compliance with these regulations.

(c) This regulation shall be used in conjunction with the following documents:

(1) Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), Pub. L. 96-510;

(2) Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499;

(3) Executive Order 12580, Superfund Implementation;

(4) FEMA relocation regulations and criteria;

(5) OMB Circular A-87, Cost Principles for State and Local Governments;

(6) Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (Uniform Regulations) 44 CFR Part 25; and

(7) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 9615)

§ 222.4 Matching contributions.

Either cash and/or the value of goods, services or facilities can qualify as matching contributions. Matching contributions need not be applied at the exact time or in proportion to the obligation of the Federal funds. However, the full matching share must be obligated by the end of the project for which the Federal funds have been made available for obligation under an approved program or project.

§ 222.5 Criteria for acceptable contributions.

(a) The value of any resources accepted as a matching share under one Federal agreement or program cannot be counted again as a contribution under another.

(b) The state seeking the match shall submit documentation sufficient for FEMA to determine that the contribution meets the following requirements. The match shall be:

(1) Necessary and reasonable for proper, cost-effective and efficient administration of the project, allocable solely thereto (subject to valid approved credit from a previous project), and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State and local governments;

(2) Verifiable from primary recipient's records;

(3) Not allocable to or included as a cost of any other federally-financed program;

(4) Authorized under State law;

(5) In conformance with limitations or exclusions set forth in these regulations, Federal laws or other governing limitations as to types or amounts of cost items;

(6) Accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances; and

(7) In conformance with OMB Circular A-87, Cost Principles for State and Local Governments.

§ 222.6 Documentation of matching contributions.

(a) The state shall maintain documentation for all items related to the relocation that it plans to use as a matching contribution. For items eligible for matching contributions, documentation of dates on which the action took place, who performed such action, the cost, and specific work performed shall be sufficient.

(b) When items are not specifically on the list of General Eligible Costs, § 222.7 of this part) the following shall be required in addition to the documentation in Section A above: sufficient supporting documentation detailing the type of work eligible, and justification to the relocation activity.

(c) The state shall also comply with the following requirements for all matching contributions:

(1) The state is responsible for maintaining records of the match and providing the documentation by eligible category when requested by FEMA or its agent.

(2) The basis by which the state determines the value of the match must be documented and a copy retained as part of the official record. State matching share records are subject to audit inspections in the same manner and to the same extent as records dealing with the receipt and disposition of Federal funding.

(3) These records shall become property of FEMA following completion of the project or, at FEMA's request, shall be retained by the state for a period of ten years.

(Approved by the Office of Management and Budget under Control Number 3067-0184)

§ 222.7 General eligible costs.

Subject to the provision of section 104(c)(5) of CERCLA, *as amended*, the following is a list of eligible expenditures. When items do not appear on the list they will be considered on a case-by-case basis for policy determinations, based on the criteria set forth in § 222.5. All costs must be reasonable.

(a) Direct and indirect salaries or wages (including overtime) of employees hired specifically for the permanent or temporary relocation when engaged in the performance of eligible work for the permanent of temporary relocation.

(b) Direct and indirect salaries or wages (including overtime) of state employees whose duties change, when they are engaged in the performance of eligible work for the permanent or temporary relocation.

(c) Regular salaries or wages of regularly employed police and fire personnel when they are engaged in the performance of work for the permanent or temporary relocation.

(d) Reasonable costs for work performed by private contractors on eligible projects contracted for by the state.

(e) Audit costs for the relocation activity.

(f) Costs for providing site security.

(g) Travel costs and per diem costs of state employees not to exceed the actual subsistence expense basis for the permanent or temporary activity.

(h) Costs for rental of protective gear and costs for protective gear reasonably lost, worn out or destroyed when used in performing work directly related to the permanent relocation activity and fully documented. Protective gear may be purchased if it cannot be rented more cheaply.

(i) Only costs for the control of vectors which exceed the average cost included for same during the previous three years, when such controls are in the public interest.

(j) Costs for providing permanent relocation assistance and real property acquisition when in accordance with Pub. L. 91-646, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 U.S.C. 9615) and FEMA regulations and criteria issued pursuant thereto. These costs include:

(1) Costs for exercising the power of eminent domain to obtain real property interest;

(2) Costs for the filing and recording of deeds in the recorder's office;

(3) Costs for the review of all sales contracts, title insurance commitments and deeds regarding the conveyance of real property interests prior to the purchase of such real property interests; and

(4) Costs for the development and implementation of a property acquisition and permanent relocation assist-

ance program. These include, but are not limited to the following costs:

(i) Development of a permanent relocation analysis;

(ii) Development and implementation of a community relations program;

(iii) Title searches and appraisals for property within the boundaries of the project;

(iv) A relocation assistance advisory program;

(v) Title reviews, settlements and closings associated with properties located within boundaries of the project;

(vi) The preparation of offers of compensation;

(vii) Acquisition of properties;

(viii) Costs for administrative settlements;

(ix) Costs for relocation assistance; and

(x) Costs for replacement housing payments.

(k) Costs for providing temporary relocation assistance in accordance with FEMA policies which include: negotiating leases, rent reimbursements, moving expenses, essential utility costs at original residence, food subsidy during transient accommodations, rental of essential furniture, and kennel costs.

§ 222.8 Ineligible costs.

(a) Regular salaries or wages of state employees, other than police or fire personnel, whose duties do not change or are not directly associated with the permanent or temporary relocation are ineligible.

(b) Replacement of revenue lost as a result of contamination in the project area are not eligible.

(c) Costs associated with potential litigation as a result of the states' pursuit and recovery of the states' cost share.

§ 222.9 Appeals.

(a) The Assistant Associate Director, Disaster Assistance Programs, State and Local Programs and Support, shall be responsible for making all policy determinations regarding Superfund cost-sharing eligibility for permanent and temporary relocation. The allowability of matching contributions, particularly those not covered in this regulation, will also be determined by the Assistant Associate Director.

(b) Appeals from the determinations of the Assistant Associate Director may be made to the Associate Director, State and Local Programs and Support.

PARTS 223–299 [RESERVED]

SUBCHAPTER E—PREPAREDNESS

EDITORIAL NOTE: Nomenclature changes to Subchapter E appear at 44 FR 56173, Sept. 28, 1979 and 46 FR 47455, Sept. 28, 1981.

PART 300—DISASTER PREPAREDNESS ASSISTANCE

Sec.
300.1 General.
300.2 Definitions.
300.3 Federal Disaster Preparedness Program.
300.4 Technical assistance.
300.5 Financial assistance.
300.6 Earthquake and hurricane plans and preparedness.

AUTHORITY: 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 45 FR 13464, Feb. 29, 1980, unless otherwise noted.

§ 300.1 General.

(a) The purpose of this part is to prescribe the standards and procedures to be followed in implementing Pub. L. 93-288 Title II—Disaster Preparedness Assistance, section 201, Federal and State Disaster Preparedness Programs.

(b) The disaster preparedness program shall be carried out in accordance with the policies set forth in § 205.3 of this chapter and the following objectives:

(1) To prepare for the efficient and expeditious provision of disaster relief.

(2) To mitigate potential disaster effects on persons and property through warning, evacuation, and emergency protective measures.

(3) To reduce the effects of hazards through effective land use and construction practices, appropriate legislation and enforcement, dissemination of disaster-related information, and elimination or lessening of disaster-producing events.

§ 300.2 Definitions.

As used in this part:

(a) "The Act" means the Disaster Relief Act of 1974, as amended (Pub. L. 93-288).

(b) "Disaster preparedness plans" means those plans prepared by Federal, State, and local governments in advance of anticipated disasters for the purpose of assuring effective management and delivery of aid to disaster victims, and providing for disaster mitigation, warning, rehabilitation, and recovery.

(c) "State disaster preparedness coordinator" means the person designated by the Governor or by State law as responsible for overall disaster preparedness program coordination or management.

(d) "Vulnerability analysis" means a systematic investigation of potential disasters in terms of probability, frequency, magnitude, and location, in order to forecast their probable effects, in specific geographical areas, on the people, systems, facilities, resources, and institutions.

§ 300.3 Federal Disaster Preparedness Program.

(a) The Director is authorized to establish a program of disaster preparedness that utilizes the services of all appropriate agencies and to provide overall management of that program by:

(1) Providing policy guidance to Federal agencies and conducting program reviews of Federal activities relating to disaster preparedness.

(2) Directing the preparation and review of Federal disaster preparedness plans.

(3) Determining goals and arranging for training of Federal and State personnel, and conducting exercises, critiques, and evaluations to enhance disaster preparedness programs.

(4) Sponsoring and monitoring disaster-related research and the application of science and technology to Federal, State, and local disaster preparedness plans and programs.

(5) Encouraging participation in disaster mitigation and recovery programs by Federal agencies, State and local governments, the practicing professions, research and academic institutions, voluntary agencies, the busi-

ness community, civic and other organizations, and individuals.

(b) The Director has delegated this authority to the Associate Director, State and Local Programs and Support primarily, to the Regional Directors within their respective Regions, and to other officers of the Agency regarding specific program elements appropriate to their responsibilities.

(c) The Regional Director shall establish a regional program of disaster preparedness that is consistent with the overall national program and with the State programs within the region and shall manage that regional program by:

(1) Reviewing Federal agency, State, and local disaster preparedness and response activities and recommending improvements.

(2) Assisting the States in accordance with the Act and these regulations.

(3) Coordinating the disaster preparedness programs of Federal agencies within the region.

(4) Preparing plans and conducting training, exercises, critiques, and evaluations to enhance Federal agencies' preparedness for disaster assistance; arranging for and carrying out such activities in conjunction with the States to ensure coordinated Federal, State, and local response to disasters.

§ 300.4 Technical assistance.

(a) The Regional Director shall, upon request, provide technical assistance to the States, in accordance with the objectives specified in § 300.1(b) of these regulations, for comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation and for assistance to individuals, businesses, and State and local governments following such disasters.

(b) Particular emphasis shall be given to technical assistance in the following aspects of disaster preparedness:

(1) The drafting of disaster-related State legislation and executive authorities.

(2) Vulnerability analyses.

(3) Work plans and other documentation for disaster preparedness grants.

(4) State and local disaster preparedness programs and procedures.

(5) Staff training, workshops, and seminars.

(6) Disaster assistance exercises.

(7) Program evaluation.

(8) Public information and education programs.

(9) Application of technological information to the disaster preparedness program.

(c) The Regional Director shall also advise the States regarding complementary Federal programs that will enhance State and local disaster assistance and preparedness.

(d) Requests for technical assistance under section 201(b) of the Act shall be made by the Governor or the State disaster preparedness coordinator to the Regional Director.

(1) The request for technical assistance shall indicate as specifically as possible the objectives, nature, and duration of the requested assistance; the recipient agency or organization within the State; the State official responsible for utilizing such assistance; the manner in which such assistance is to be utilized; and any other information needed for a full understanding of the need for such requested assistance.

(2) The State shall provide assurance that technical assistance does not duplicate any existing State capability, any State or local effort funded by the Federal Government, or any Federal assistance provided under other authority.

(e) Nothing in this part shall be construed to prevent the States from obtaining appropriate technical assistance from other sources, including other Federal agencies under such agencies' own statutory or delegated authorities.

§ 300.5 Financial assistance.

(a) Each State (as defined in the Act) except the Canal Zone requested and received an initial development grant of up to $250,000 for the development of plans, programs, and capabilities for disaster preparedness and prevention. All of these grants have been completed.

(b) The Regional Director may provide to the States, in accordance with the objectives specified in § 300.1(b) of these regulations, upon written request by the Governor or an authorized representative, an annual improvement grant of up to $25,000 but not to exceed 50 percent of eligible costs. The nonfederal share may exceed the Federal share.

(c) "Annual" improvement grant means that the State may receive no more than $25,000 in actual reimbursements during any continuous 12-month period.

(1) Each grant, even though received annually, is a new grant, subject to all the requirements of a new grant. It is not a renewal of or an amendment to that of the preceding year.

(2) An improvement grant normally will have a one-year duration to be succeeded by a new grant without a break in time, in the interest of program and management continuity. A one-year length is not a requirement, however; nor is continuous funding. There can be a hiatus between grant periods, grants may be for more or less than a year, or grants can overlap, if the State can justify these procedures.

(d) The required nonfederal share for the improvement grant may be in cash or in kind.

(1) State or local revenue-sharing funds may be used for the nonfederal share, as may, within certain limits, funds of Federal-State Regional Commissions; these are exceptions to the prohibition against matching Federal funds with Federal funds. Any nonfederal funds may also be used for this share.

(2) The nonfederal share may be wholly or partially in kind. Forms of in-kind contribution may include, for example, salaries and expenses of State or local personnel, rentals, pro-rata cost of facilities and equipment, and services, provided these costs are not claimed for reimbursement and are not charged as indirect costs to the grant.

(3) Federal funds match the total State expenditure (up to the allowable maximum), not item-by-item costs. Reimbursements are made only for actual eligible expenditures, not for obligations incurred by the State.

(e) The following minimum requirements shall apply to each improvement grant, to the extent considered by the Regional Director as necessary to the State's disaster preparedness capability.

(1) The State shall maintain a current State emergency plan for implementation as required by section 301(b) of the Act.

(2) The State shall take into account the kinds of disasters to which it is most vulnerable and the particular requirements therefrom for disaster response and mitigation.

(3) State guidance and assistance shall be provided to local jurisdictions in the development of their disaster preparedness plans, programs, and capabilities.

(4) The State emergency plan shall incorporate appropriate policies and procedures pertaining to environmental clearance to assure State and local compliance with applicable Federal, State, and local laws and regulations.

(f) The improvement grant may apply to such preparedness programs and capabilities as:

(1) Planning for disaster response in general, for specific disaster contingencies in special locales, for local and area mutual emergency support under State sponsorship, for long-range recovery, and for disaster mitigation and hazard reduction.

(2) Revision, as necessary, of State legislation, implementing orders, regulations, and other authorities and assignments relevant to disaster preparedness and assistance.

(3) Disaster-related mutual aid compacts and agreements.

(4) Conduct of vulnerability analyses not otherwise available but necessary for the development of State and local disaster preparedness plans and programs.

(5) Design of disaster-related emergency systems.

(6) Training and exercises.

(7) Program reviews and postdisaster critiques.

(8) Public information and education programs.

(g) The improvement grant shall be product-oriented; that is, it must produce something measurable in some way so as to determine specific results, to substantiate compliance with the grant work-plan objectives, and to evidence contribution to the State's disaster capability.

(h) The Regional Director shall approve all costs claimed for reimbursement on the basis of their reasonableness and necessity for the efficient administration of the grant program; however—

(1) Federal funds provided to the State, or through the State to local government, under the provisions of section 201 of the Act may not be used to procure or repair equipment, materials, or facilities except that required for administration of the grant;

(2) Out-of-State travel may not be charged to the grant without prior approval of the Regional Director; and

(3) Travel and other costs for participation in conferences, training and similar activities, whether or not provided for in the grant work plan, shall be eligible only if clearly beneficial to the grant program.

(i) All grants under section 201 of the Act are subject to Office of Management and Budget (OMB) circular A-87, Cost principles applicable to grants and contracts with State and local governments; and OMB Circular No. A-102 Revised, Uniform administrative requirements for grants-in-aid to State and local governments (August 24, 1977). In accordance with these requirements the following provisions shall also apply:

(1) [Reserved]

(2) The submitted application shall include, in an original and two copies:

(i) Standard Form 424, Application for Federal Assistance, indicating the amount requested and the nonfederal share, the grant starting date and duration, and the designated agency to carry out or manage the improvement effort. This agency should be the one most appropriate for the work to be accomplished and need not be that designated previously for the development grant.

(ii) A budget estimate; the Budget Information form in Circular A-102 Revised, Attachment M, should be used.

(iii) A work plan setting forth those elements of the comprehensive and detailed program that are to be improved under this grant and any additional or subordinate plans or other products or activities to be developed for specific contingencies or disaster functions in accordance with the State's disaster preparedness program. Even though the grant is to cover only one year, the work plan may, to indicate continuity of intended effort, cover a multi-year period, especially if the work to be performed in that year is part of a longer-range project.

(iv) *Assurance of compliance with applicable laws and regulations.* Inclusion of a standard "assurances" sheet available from the Regional Director or adapted from A-102 Revised, Attachment M, is sufficient.

(3) The Regional Director has been delegated full authority, within these regulations and other policy and procedural instructions as the Director, Federal Emergency Management Agency or the Associate Director, State and Local Programs and Support, may from time to time provide, to approve or reject improvement grant applications and to award or amend the grants.

(i) Upon approval, the Regional Director shall complete Section III of SF 424 and provide copies to the State for the designated agency, and (if different) the State Central Information Reception Agency (SCIRA).

(ii) In approving a grant, the Regional Director may attach special conditions, if deemed necessary, to ensure compliance with the grant requirements. It shall be standard practice for the Regional Director to review these with the concerned State officials in advance of approval. Formal acceptance of these conditions is provided in the "assurances" sheet submitted as part of the application package.

(4) A grant application may be amended at any time prior to the scheduled completion of work under the grant if warranted on the basis of new requirements, changes in Federal or State statutes or other legal authorities, or other sufficient reason: *Provided,* Such proposed modifications are mutually agreed upon by the Governor or an authorized representative and by the Regional Director.

(5) At the request of the State through Standard Form 270, the Regional Director may approve an ad-

rance of funds not to exceed the Federal share of the first 90 days' estimated operational expenses.

(6) The State shall provide quarterly performance reports to the Regional Director. Reporting shall be by program quarter unless otherwise agreed to by the Regional Director.

(7) To the extent feasible, the State shall submit at least two copies of each grant product to the Regional Director. The Regional Director's acceptance of a grant product as fulfilling the terms of the grant should not be construed as approval of or concurrence with the content of the product as to its quality.

(8) In addition to reviews of specific products, the Regional Director shall review grant performance at least quarterly, in such manner as the Regional Director may determine. If review findings clearly indicate a failure to meet the terms of the grant, the Regional Director shall take appropriate action with the State to rectify the problem or, if necessary, shall suspend all or part of an amount claimed for payment or even the grant itself.

(9) The State shall submit to the Regional Director claims for reimbursement at least quarterly but not more often than monthly, on Standard Form 270, signed by the State disaster preparedness coordinator or other authorized representative. Payment shall be made within 30 days after receipt of a properly executed request for payment (except for final payment, which may be withheld pending audit).

(10) The State shall conduct a final audit of each grant to determine, as a minimum, the fiscal integrity of financial transactions and reports, and compliance with laws, regulations, and administrative requirements. The State shall schedule such audits with reasonable frequency, usually annually, but not less frequently than once every 2 years, considering the nature, size, and complexity of the activity. Federal audits shall be conducted only at the request of the Regional Director or the Associate Director, State and Local Programs and Support.

[45 FR 13454, Feb. 29, 1980, as amended at 48 FR 29318, June 24, 1983; 48 FR 44544, Sept. 29, 1983; 50 FR 40007, Oct. 1, 1985]

§ 300.6 Earthquake and hurricane plans and preparedness.

(a) The objective of the program is to prepare special or additional plans and develop capabilities, at all levels of government for achieving integrated response to the threat or consequences of severe earthquakes or hurricanes in high-risk, high-population areas, to the extent regular emergency preparedness measures are insufficient for these contingencies.

(b) The program is normally funded by project grants. When appropriate, certain projects may be financed through cooperative agreements or contracts, pursuant to the definitions.

(c) Funding may cover all or any part of the cost of the project. Normally a vulnerability analysis will be completed, after which appropriate contingency planning will be initiated. The basic information developed by the vulnerability analysis provides the direction and parameters needed by decisionmakers and operations personnel in their planning. The vulnerability analysis may address such earthquake-related or hurricane-related activities as determination and definition of the hazard area, identification of seismic or storm-surge risks, estimation of casualties and structural damage, and postulated impact on essential operations, population, and resources. Contingency planning efforts may include developing or improving unique, special or extraordinary protective, relief, long-range recovery, and mitigation measures. Consideration will be given to studies or plans for earthquake or hurricane caused catastrophes such as landslides, dam ruptures, flooding, subsidence or hazardous-materials releases. Grants for the vulnerability analysis and for contingency planning may be awarded separately or combined.

(d) Grants are awarded on the basis of the best accepted, scientifically credible state-of-the-art threat assessment using population-at-risk, potential loss of life, property damage, and probability for the maximum credible event (earthquakes, hurricanes, or related phenomena). Priority is given to areas, as determined by FEMA, on the basis of the existing data and expert consultation cited above. Other considerations for award should be inclusion in the work plan of mechanisms for participation by practicing professions, voluntary agencies, academic groups, commercial interests, and the public at large. Further, the affected jurisdiction(s) should provide tangible proof of their interest in undertaking the preparedness effort as evidenced by assignment of resources to the project.

(1) *The following earthquake areas are identified:* San Francisco, Los Angeles/San Diego, Puget Sound, Salt Lake City, Anchorage, Honolulu, Boston, Charleston (SC), Central United States, Upper New York State, and Puerto Rico (studies or plans for some of which have already been funded).

(2) *The following hurricane areas are identified:* Corpus Christi, Galveston/Houston, New Orleans, Tampa Bay, Miami/Miami Beach, Savannah, Charleston (SC), Chesapeake Bay, Long Island/New Jersey Barrier Coast, Matagorda (TX), Sabine Lake (TX-LA), Mobile, the Mississippi Gulf Coast, the Florida Keys, Lake Okeechobee, Pamlico Sound, Delaware Bay/Coast, Buzzards Bay/Cape Cod, Puerto Rico, Virgin Islands, Hawaii, Guam, Samoa, and the Trust Territories.

(3) The lists contained in paragraphs (d) (1) and (2) of this section are not all inclusive nor exclusive. They appear as examples and are dynamic. Consideration for these and other areas will be in accordance with the criteria listed in paragraph (d) of this section.

(e) The grant (or a cooperative agreement or contract, if more appropriate) would usually be to a State—as defined by the Disaster Relief Act of 1974—but could be to a combination of substate jurisdictions or an interstate consortium. FEMA may, if it determines appropriate, arrange for a vulnerability analysis to be performed under a procurement contract or an interagency agreement.

(f) Grants are discretionary and thus must be approved by the Director or the Director's designee (the Office of the Comptroller) or, upon delegation of approval authority, by the Regional Director. Unless otherwise stipulated, funding will be managed and projects monitored and reviewed by the cognizant FEMA Regional Office.

(g) A preapplication conference with involvement of affected State agencies, local governments, and the cognizant Regional Office is needed to review and discuss the grant Work Plan in draft. FEMA technical assistance is available for application preparation.

(h) A grant request must be in writing from the Governor or Governor's authorized representative to the appropriate Regional Director. Unless otherwise indicated herein, application, reimbursement, reporting, and auditing procedures shall follow the same guidelines as set forth in § 300.5 (h) and (i) of these regulations and in other applicable Federal regulations.

[46 FR 47455, Sept. 28, 1981, as amended at 48 FR 44544, Sept. 29, 1983; 50 FR 40007, Oct. 1, 1985]

PART 301—CONTRIBUTIONS FOR CIVIL DEFENSE EQUIPMENT

Sec.

301.1 Purpose.
301.2 Definitions.
301.3 Project applications.
301.4 Conditions of contributions.
301.5 [Reserved]
301.6 Billing and payment.
301.7 Advances of Federal funds.
301.8 Limitations on amount and obligation of Federal funds.
301.9 Procurement.
301.10 [Reserved]
301.11 Compliance.

AUTHORITY: 50 U.S.C. App. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

EDITORIAL NOTE: Nomenclature changes appear at 38 FR 16775, June 26, 1973.

§ 301.1 Purpose.

The purpose of the regulations in this part is to prescribe the basic terms and conditions under which the FEMA, pursuant to the provisions of section 201(i) of the Act, contributes Federal funds to the States for the procurement of civil defense equipment.

[29 FR 1322, Jan. 25, 1964. Redesignated at 29 FR 6384, May 15, 1964 and 44 FR 56173, Sept. 28, 1979]

§ 301.2 Definitions.

Except as otherwise stated, when used in the regulations in this part, the meaning of the listed terms are as follows:

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*).

(b) *Allowable costs.* Except where Federal assistance for such costs is restricted or prohibited by law, the cost principles set forth in CPG 1-3, as required by OMB Circular A-87 apply in determining allowability and allocability of costs incurred by States and their political subdivisions. Costs which are allowable only with the approval of the grantor agency are allowable only to the extent so provided in CPG 1-3. No cost is allowable unless it is required to meet civil defense needs determined in accordance with the provisions of CPG 1-3.

(c) *Civil defense equipment.* Facilities, materials, and organizational equipment for which the FEMA approves financial contributions under section 201(i) of the act.

(d) *CPG 1-3.* FEMA's "Federal Assistance Handbook" promulgated as Civil Preparedness Guide (CPG) 1-3 as amended by numbered changes thereto and by Civil Preparedness Circulars (CPC).

(e) *FEMA.* Federal Emergency Management Agency. Where action is to be taken, this term denotes the Director or other duly authorized official(s) acting under the authority delegated.

(f) *Facilities.* Buildings, shelters, and utilities, exclusive of land.

(g) *Grantee.* A State, and where applicable, a political subdivision joining in the State's application, which holds a FEMA-approved project application for Federal financial assistance under section 201(i) of the act, which has not been closed out by completion or termination under FEMA procedures set forth in CPG 1-3.

(h) *Materials.* All materials, supplies, medicines, equipment, component parts, and technical information (including training courses) and processes necessary for civil defense.

(i) *Organizational equipment.* Equipment (other than materials and facilities) determined by the FEMA to be (1) necessary to a civil defense organization, as distinguished from personal equipment, and (2) of such type or nature as to require it to be financed in whole or in part by the Federal Government. It shall not be construed to include those items which the local community normally utilizes in combating local disasters except when required in unusual quantities dictated by the requirement of the civil defense plans.

(j) *Program.* A course of action adopted by a State (or political subdivision) in a specific civil defense area of activity.

(k) *Project.* A definable part of a program which is complete in itself.

(l) *State.* Any of the several States; the District of Columbia; the Commonwealth of Puerto Rico; the Government of the Northern Mariana Islands; the territories of American Samoa, Guam, and the Virgin Islands; and interstate civil defense authorities established by interstate compact pursuant to section 201(g) of the act.

[43 FR 25093, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, and amended at 44 FR 62517, Oct. 31, 1979; 48 FR 44544, Sept. 29, 1983; 50 FR 40007, Oct. 1, 1985]

§ 301.3 Project applications.

(a) *Forms and assurances.* A request for a Federal financial contribution shall be made on a FEMA-prescribed project application form conforming to the requirements of Attachment M of OMB Circular No. A-102, and, in addition to acknowledgement of the applicant's receipt of a copy of CPG 1-3 shall contain assurances of and agreement for compliance with the regulations, policies, guidelines and requirements of FEMA regulations in Subchapter E, Chapter I, of Title 44 of the Code of Federal Regulations, CPG 1-3, OMB Circular A-87 and OMB Circular No. A-102.

(b) *Scope.* The project application should cover a definable civil defense purpose, complete in itself. Although explanatory information for cost estimate purposes must be detailed, applicants are to define the project in terms of civil defense measures to be undertaken rather than as a shopping list for purchase. For example, in terms of providing a civil defense warning system for a given geographical area's population, the specific number and types of sirens and other equipment expected to be required would be indicated as background information for the budget summary.

(c) *Signature.* The project application must be signed by an authorized official of the State and in the case of a political subdivision joining the State in its application, also by an authorized official of such political subdivision. Except as otherwise required by law, no authorized official will be required to sign the same project application more than once. However, should changes in the scope of the project, the applicable terms and conditions, or the amount of funding be requested, an authorized official representing each applicant may be required to sign a revision or an addendum on the same form as the original, but no applicant shall be required to provide information which was previously provided in the original application.

(d) *Procedures.* Procedures for the processing of project applications are set forth in CPG 1-3. They include provisions for informing the applicant of the basis for any rejection of its application.

(e) *Deadlines.* Project applications, addenda thereto, revised applications, and requests for changes or supplements to approved grants must be timed to accommodate fiscal year limitations on the obligation of Federal funds. (See § 301.8 of this part.)

(f) *Construction projects.* Project applications for all grants where a major portion of the project involves construction work must be submitted on a FEMA prescribed project application form conforming to the requirements of Attachment M of OMB Circular No. A-102 pertaining to application for Federal assistance for construction programs, and the project must be carried out in accordance with the applicable requirements of FEMA regulations for federally assisted construction. Some examples of projects where a major portion normally would be considered to involve construction work are those for incorporting an emergency operating center in the construction of a new public building, the modification of a portion of an existing public building for use as an emergency operating center, the erection of antenna towers for a civil defense communications system, the erection of towers or poles for sirens for use in a civil defense warning system, and the installation of an emergency generator for civil defense use.

(g) *Appeals.* Upon rejection of a project application by the Regional Director, FEMA on a basis other than a lack of available funding, the applicant may appeal to the Director, FEMA, under procedures set forth in CPG 1-3.

[43 FR 25093, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979 and amended at 48 FR 44544, Sept. 29, 1983; 50 FR 40007, Oct. 1, 1985]

§ 301.4 Conditions of contributions.

FEMA contributions for civil defense equipment costs are subject to the following conditions:

(a) *Certification.* The making of a request for a contribution shall constitute a certification by the State (and political subdivision, where applicable) that the State's matching share is available or will be available before Federal funds are disbursed; that the civil defense equipment, regarding which a contribution is requested, is needed by the applicant over and above its other-than-civil defense needs, in order to meet its requirements under civil defense operational plans approved by FEMA (local plans are approved as part of the State plans); and that the State (and political subdivision, where applicable) will comply with the policies, guidelines and requirement contained in the Assurances section of the project application, including without limitation, FEMA regulations (Code of Federal Regulations, Title 44, Chapter I—Federal Emergency Management Agency, Subchapter E) and with criteria and procedures set forth in CPG 1-3.

(b) *Standards and specifications.* Civil defense equipment procured by the State (or political subdivision) must meet such FEMA-prescribed minimum standards and specifications as are set forth in CPG 1-3 or other FEMA guidance material referenced therein. Application of such standards and specifications to unique installation or uses of equipment shall be as determined by FEMA following receipt of full information in accordance with procedures set forth in CPG 1-3.

(c) *Financial management*—(1) *System.* Grantees shall establish and maintain a financial management system in conformity with the standards set forth in CPG 1-3 as required by Attachment G of OMB Circular No. A-102.

(2) *Reporting.* Grantees shall comply with the uniform financial reporting requirements set forth in section 2 of Chapter 3 of CPG 1-3, as required by Attachment H of OMB Circular No. A-102.

(d) *Property management*—(1) *Standards.* Grantees shall comply with the standards set forth in CPG 1-3, as required by Attachment N of OMB Circular No. A-102, governing the utilization and disposition of property which has been furnished by the Federal Government, acquired in whole or in part with Federal funds, or whose cost has been charged to a project supported by a Federal grant.

(2) *Release of Federal interest.* As to the requirement of CPG 1-3 (Attachment N of OMB Circular No. A-102) for payment to FEMA of an amount equal to the Federal share of its fair market value prior to disposal or other than authorized use of an item of nonexpendable personal property procured by a political subdivision at a unit acquisition cost of $1,000 or more, where guaranty by the State of such payment to FEMA is not permissible under State law, the guaranty by the State, as joint applicant with its political subdivision shall be limited to an amount not to exceed the amount of the Federal contribution paid by FEMA toward procurement of the particular item of property.

(3) *Use.* With regard to application of the property management standards set forth in Appendix D of CPG 1-3, "purpose of the grant program," includes use for providing emergency assistance in any area of the United States which suffers a disaster other than a disaster caused by enemy attack. Detailed guidance is set forth in CPG 1-3.

(e) *Monitoring and reporting program performance.* Grantees shall comply with the provisions set forth in CPG 1-3, as required by OMB Circular No. A-102, regarding the monitoring and reporting of grant-supported activities and programs.

(f) *Records retention and availability.* Financial records, supporting documents, and all other records pertinent to a grant shall be retained by the grantee and made available as prescribed by Appendix B of CPG 1-3 in accordance with the requirements of OMB Circular No. A-102.

[43 FR 25093, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, and amended at 50 FR 40007, Oct. 1, 1985]

§ 301.5 [Reserved]

§ 301.6 Billing and payment.

When civil defense equipment procured by a State (or political subdivision) has been delivered to the State (or political subdivision), the FEMA, upon the receipt of proper billing, shall make payment, by check drawn against the Treasury of the United States, to the authorized official of the State or political subdivision designated by the State.

[43 FR 25094, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 301.7 Advances of Federal funds.

The State (and where appropriate, the political subdivision) shall submit their requests for advance payment on the "Request for Advance or Reimbursement" form (FEMA Form No. 1406) prescribed in Attachment H of OMB Circular No. A-102. Advances by Treasury check will be made in accordance with the provisions of Treasury Circular No. 1075 and FEMA promulgated guidance material furnished the State and political subdivision; *Provided,* That the State (and where applicable, the political subdivision) has established or demonstrated to FEMA the willingness and ability to establish procedures that will minimize the time elapsing between the transfer of funds and their disbursement by the State or political subdivision, as the case may be; and *Provided further*, That the State (and where applicable, its political subdivision) has established a financial management system meeting the standards for fund control and accountability prescribed in Attachment G of OMB Circular No. A-102 "Standards for Grantee Financial Management Systems."

[40 FR 36328, Aug. 20, 1975, as amended at 43 FR 25094, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 301.8 Limitations on amount and obligation of Federal funds.

(a) *Federal-grantee share.* The Federal contribution shall not exceed 50 percent of the total allowable cost of the civil defense equipment. The grantee's share of such cost may be derived from any source it determines consistent with its laws; *Provided, however*, That except as otherwise expressly provided by Federal law, no part of the grantee's share has been or will be derived from Federal funds. No Federal contribution shall be made for the procurement of land. The value of any land contributed to the program or project shall be excluded from the computation of the grantee's share.

(b) *Fiscal year control.* Federal funds are available for obligation under the program in this part on a Federal fiscal year basis (October 1 to September 30, inclusive) and cannot be used to cover obligations incurred or expenditures made by a grantee prior to the date of first availability of the appropriation otherwise remaining available for obligation. With regard to services, such as maintenance and utility services, being rendered over a continuing period of time, contributions shall be only for eligible services required to serve the civil defense needs of the grantee during the Federal fiscal year current at the time the project application is approved by FEMA.

[43 FR 25094, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 301.9 Procurement.

Grantees shall comply with the provisions of CPG 1-3, as required by OMB Circular No. A-102, regarding the procurement of supplies, equipment, construction, and other services with the assistance of Federal funds. Included, without limitation, is a provision that, with certain specified exceptions, formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement. Where such advertised bids are obtained, the awards shall be made to the responsible bidder whose bid is responsive to the invitation and is most advantageous to the grantee, price and other factors considered and FEMA's contribution will be limited to its share of the allowable costs under such lowest acceptable bid.

[43 FR 25094, June 9, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, and amended at 50 FR 40007, Oct. 1, 1985]

§ 301.10 [Reserved]

§ 301.11 Compliance.

(a) The State (or political subdivision) must be prepared to furnish the FEMA, upon its request, with proper documentation that there has been compliance with the requirements of the regulations in this part and the related procedures and criteria prescribed in CPG 1-3 in connection with its procurement of any item of civil defense equipment and its request and receipt of a Federal contribution therefor.

(b) Where, after reasonable notice to the State and opportunity for hearing in accordance with Part 303 of this chapter, the FEMA finds that the State (or political subdivision) has failed or is failing to expend funds in accordance with the requirements of the Act or the terms and conditions of the regulations in this part, the FEMA may withhold payments of any financial contributions to such State, due or to become due.

[29 FR 1322, Jan. 25, 1964. Redesignated at 29 FR 6384, May 15, 1964, and amended at 43 FR 25094, June 9, 1978. Further redesignated at 44 FR 56173, Sept. 28, 1979]

PART 302—CIVIL DEFENSE-STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

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AUTHORITY: 50 U.S.C. App. 2251 et seq. Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 48 FR 44211, Sept. 28, 1983, unless otherwise noted.

§ 302.1 Purpose.

(a) The regulations in this part prescribe the requirements applicable to the Emergency Management Assistance (EMA) program for Federal financial contributions to the States, and through the States to their political subdivisions, for up to one half of the necessary and essential State and local civil defense personnel and administrative expenses, under section 205 of the Federal Civil Defense Act of 1950, as amended, and set forth the conditions under which such contributions will be made.

(b) The intent of this program is to increase civil defense operational capability at the State and local levels of government by providing Federal financial assistance so that personnel and other resources can be made available for essential planning and other administrative functions and activities required in order to accomplish this objective.

§ 302.2 Definitions.

Except as otherwise stated or clearly apparent by context, the definitions ascribed in this section to each of the listed terms shall constitute their meaning when used in the regulations in this part. Terms not defined in this part shall have the meaning set forth in their definition, if any, in the Federal Civil Defense Act of 1950, as amended.

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*).

(b) *Administrative expenses.* Necessary and essential expenses, other than personnel expenses as defined in this section, of a grantee and its subgrantees incurred in the administration of their civil defense programs, as detailed in CPG 1-3, Federal Assistance Handbook, and in CPG 1-32, FEMA Financial Assistance Guidelines.

(c) *Annual submission.* The State's annual request for participation in the contributions program authorized by section 205 of the Act. As specified in CPG 1-3, it includes staffing patterns (including job description changes), budget requirements, and any amendments to the State administrative plan, a request for funds covering the State and its subgrantees and program statements of work for the grantee and subgrantees under the Comprehensive Cooperative Agreement.

(d) *Approval.* All approvals by the Federal Emergency Management Agency (FEMA) as grantor agency required under the regulations in this part mean prior approval in writing signed by an authorized FEMA official. When failure to obtain prior approval of an action has not resulted and is not expected to result in any failure of compliance with a substantive requirement, and approval after the fact is not contrary to law (or regulation having the effect of law), written approval after the fact may be granted at the discretion of the authorized official.

(e) *CPG 1-3.* Civil Preparedness Guide entitled "Federal Assistance Handbook," which sets forth detailed guidance on procedures that a State and, where applicable, its political subdivisions must follow in order to request financial assistance from the grantor agency. It also sets forth detailed requirements, terms, and conditions upon which financial assistance is granted under these regulations. Included are amendments by numbered changes. References to CPG 1-3 include provisions of any other volumes of the CPG series specifically referenced in CPG 1-3. Copies of the Civil Preparedness Guides and the Civil

Preparedness Circulars may be ordered by FEMA Regional Offices using FEMA Form 60-8 transmitted to FEMA, P.O. Box 8181, Washington, DC, 20024. One or more copies of CPG 1-3 have been distributed to each State and to each local government participating in the program under the regulations in this part. Copies of revisions and amendments are distributed to participating governments (addressed to the Emergency Management Coordinator) upon issuance.

(f) *Comprehensive Cooperative Agreement (CCA).* Provides for each State a single vehicle for applying for and receiving financial assistance for several discrete FEMA programs and for organizing and reporting on emergency management objectives and accomplishments, particularly under the funded programs.

(g) *Emergency management.* Refers to the activities and measures undertaken by a State, or one of its political subdivisions, to manage a "civil defense program" as defined and provided for by the Federal Civil Defense Act of 1950, as amended, including without limitation Title V, added by Pub. L. 96-342, and section 207, added by Pub. L. 97-86. Title V calls for an improved civil defense program that includes:

(1) A program structure for the resources to be used for attack-related civil defense; (2) a program structure for the resources to be used for disaster-related civil defense; and (3) criteria and procedures under which those resources planned for attack-related civil defense and those planned for disaster-related civil defense can be used interchangeably. Thus, emergency management includes "civil defense" for and operations in either attack-related or disaster-related emergencies. Section 207 allows Federal Civil Defense Act funds to be used for disaster preparedness and response if such use "is consistent with, contributes to, and does not detract from attack-related civil defense preparedness." Also 44 CFR Part 312, Use of Civil Defense Personnel, Materials, and Facilities for Natural Disaster Purposes, provides terms and conditions for such use.

(h) *Director.* The head of the grantor agency or another official of the Agency authorized in writing by the Director to act officially on behalf of the Director.

(i) *Forms prescribed by the grantor agency.* Forms prescribed by the grantor agency are identified in CPG 1-3 and may be ordered by FEMA Regional Offices using FEMA Form 60-8 transmitted to FEMA, P.O. Box 8181, Washington, DC, 20024.

(j) *Grantee.* A State that has received EMA funds as a result of having a State administrative plan, a statement of work, and an annual submission, all approved by the grantor agency as meeting the requirements prescribed in this part and in CPG 1-3 for necessary and essential State and local civil defense personnel and administrative expenses for a current Federal fiscal year.

(k) *Grantor agency.* The Federal Emergency Management Agency (FEMA).

(l) *Interstate civil defense authority.* Any civil defense authority established by interstate compact pursuant to section 201(g) of the Act.

(m) *Necessary and essential civil defense expenses.* Necessary and essential civil defense expenses are those required for the proper and efficient administration of the civil defense program of a grantee or a subgrantee as described in a State administrative plan and statement of work approved by the Regional Director as being consistent with the national plan (i.e., program) for civil defense and as meeting other requirements for civil defense prescribed by or under provisions of the Act.

(n) *OMB Circular A-87.* "Cost Principles Applicable to Grants and Contracts with State and Local Governments," promulgated by the Office of Management and Budget, Executive Office of the President, as published in the FEDERAL REGISTER (46 FR 9548) and subsequent amendments or revisions. (See CPG 1-32, Financial Assistance Guidelines).

(o) *OMB Circular A-102.* "Uniform Administrative Requirements for Grants-in-aid to State and Local Governments," promulgated by the Office of Management and Budget, Executive Office of the President (42 FR 45828) including amendments or revisions as published in the FEDERAL REGISTER. (See CPG 1-32, Financial Assistance Guidelines).

(p) *Emergency Operations Plan (EOP).* State or local government Emergency Operations Plans identify the available personnel, equipment, facilities, supplies, and other resources in the jurisdiction and states the method or scheme for coordinated actions to be taken by individuals and government services in the event of natural, manmade and attack-related disasters.

(q) *Personnel expenses.* Necessary and essential civil defense expenses for personnel on the approved staffing pattern of a grantee or subgrantee (including but not necessarily limited to salaries, wages, and supplementary compensation and fringe benefits) for such employees appointed in accordance with State and local government laws and regulations under a system which meets Federal merit system and other applicable Federal requirements. Such expenses must be supported by job descriptions, payrolls, time distribution records, and other documentation as detailed in CPG 1-3. Personnel compensation and other costs incurred with regard to employees who are not on the civil defense staff but whose work serves the civil defense agency (e.g., State's budget and accounting office) may be charged as civil defense expense to the extent covered therefore in a federally approved indirect cost allocation plan.

(r) *Political subdivisions.* Local governments, including but not limited to cities, towns, incorporated communities, counties or parishes, and townships.

(s) *Regional Director.* A FEMA official delegated authority to exercise specified functions as they apply to grantees and subgrantees, within the geographical area of a particular region as identified (including address) in 44 CFR Part 2.

(t) *State.* Any of the actual States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam, and the Virgin Islands.

(u) *State administrative plan (OMB 3067-0138).* A one-time submission with amendments as necessary to keep it current, the plan is a formal description of each participating State's total civil defense program and of related State and local laws, executive directives, rules, and plans and procedures, including personnel standards administered on a merit basis, updated emergency operations plans, travel regulations, indirect cost allocation plans and other information necessary to reflect the total civil defense program throughout the State. The plan also includes without limitation documentation as to administrative and financial systems to assure compliance with uniform grant-in-aid administrative requirements for States and subgrantees as required under OMB Circular A-102 and with other requirements relevant to the eligibility of the State and its political subdivisions for participation in financial assistance programs for civil defense purposes. Detailed requirements are prescribed in CPG 1-3. (Also see § 302.3.)

(v) *Statement of work.* Formal identification of specific actions to be accomplished by a State and its political subdivisions during the fiscal year for which Federal funds are being requested by the State. Submission is made to the FEMA Regional Director as part of the CCA Program Narrative.

(w) *Subgrantee.* A political subdivision of a State listed in the State's annual submission (or amendments thereto) as approved by the grantor agency (including any grantor agency-approved amendments thereto) as eligible to receive a portion of the Federal financial contribution provided for use within the State. The term includes Indian tribes when the State has assumed jurisdiction pursuant to State law and tribal regulations.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12520, Apr. 11, 1986]

§ 302.3 Documentation of eligibility.

In order to remain eligible for Federal financial contributions under the regulations in this part, each State must have on file with FEMA a current State administrative plan, an emergency operations plan for civil defense, and an annual submission (including a statement of work) which have been approved by the Regional Director as being consistent with the national plan (i.e., program) for civil defense and as meeting the requirements of the regulations in this part and CPG 1-3. A State may allocate a portion of its EMA funds to an Indian tribe as a subgrantee where the State has assumed jurisdiction pursuant to State law and tribal regulations.

(a) *State administrative plans.* Every State has a State administrative plan file with FEMA and is required to keep the plan current through amendments as necessary. Such plans and amendments shall be reviewed by the Regional Director, who will advise the State in writing as to the effect, if any, changes will have on the continued eligibility of the State and its subgrantees. The Regional Director shall not, however, approve any amendments that would result in failure of the plan to meet these criteria:

(1) Provides for and is, pursuant to State law, in effect in all political subdivision of the State, mandatory on them, and, unless waived by the Director under section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214), administered or supervised by a single State administrative agency. In demonstrating that the State administrative plan for civil defense is in effect in all political subdivisions of the State and mandatory on them, the plan shall contain references to the applicable State statutes and local ordinances, executive orders and directives, and rules and regulations at the State and local level that establish the civil defense authority, structure, plans, and procedures, including those relating to emergency operations, throughout the State.

(2) Provides assurance of nonfederal contributions at least equal to Federal funding for necessary and essential costs eligible under this program from any source consistent with State law, but not from another Federal source unless Federal law specifically authorizes the use of funds from such Federal source as part of the State's share.

(3) Provides for the development of State and local government civil defense emergency operations plans pursuant to the standards approved by the Director.

(4) Provides for the employment by the State of full-time civil defense director or deputy director.

(5) Provides for the establishment and maintenance of methods of personnel administration in public agencies administering or supervising the civil defense program, at both the State and local government levels, in conformity with the Standards for a Merit System of Personnel Administration (5 CFR Part 900), which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, section 2, 84 Stat. 1908) prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970, as amended.

(6) Provides for the establishment of safeguards to prohibit State and local government employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(7) Provides that the State shall make such reports (including without limitation financial reports) in such form and content as the Director may require.

(8) Provides that the State and all subgrantees shall retain, in accordance with OMB Circular A-102, and make available to duly authorized representatives of the Director and the U.S. Comptroller General all books, records, and papers pertinent to the grant program for the purpose of making audits, examinations, excerpts, and transcripts necessary to conduct audits.

(9) Provides for establishment and maintenance of a financial management system of grant-supported activities of the State and all subgrantees which meets the federally prescribed standards promulgated in "Standards for Grantee Financial Management Systems," Attachment G of OMB Circular A-102.

(10) Provides for establishment and maintenance of procedures for monitoring and reporting grant program and projet performance of the State

and its subgrantees which meet the federally prescribed standards promulgated in Attachment I of OMB Circular A-102.

(11) Provides for the establishment and maintenance at the State level and by subgrantees of property management systems in accordance with the federally prescribed standards set forth in Attachment N of OMB Circular A-102.

(12) Provides for the establishment and maintenance at the State level and by subgrantees of systems for the procurement of supplies, equipment, construction, and other services, with the assistance of grant funds, in accordance with federally prescribed standards set forth in Attachment O of OMB Circular A-102.

(13) Provides for disbursement of the appropriate share of the Federal grant to the State's subgrantees in accordance with requirements detailed in CPG 1-3.

(14) Provides for the State's supervision and review of the civil defense plans, programs, and operations of its subgrantees to obtain conformity and compliance with Federal requirements and goals set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(15) Contains a Statement of Compliance with grantor agency regulations relating to nondiscrimination in FEMA programs (see 44 CFR Part 7).

(16) Provides for timely submission to the appropriate Regional Director of amendments to the administrative plan as necessary to reflect the current laws, regulation, criteria, plans, methods, practices, and procedures for administration of the State's civil defense program and those of its subgrantees.

(17) Conforms to other Federal standards and requirements set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(18) Provides for performance of independent organizationwide audits by State and local governments that receive EMA funds of their financial operations, including compliance with certain provisions of Federal law and regulation.

(b) *Emergency Operations Plans (EOP's)*. (1) Each participating State shall have an EOP approved by the Regional Director and conforming with the requirements for plan content set forth in this part and in CPG 1-3, and in CPG 1-8 "Guide for the Development of State and Local Emergency Operations Plans" and in CPG 1-8A, "Guide for the Review of State and Local Emergency Operations Plans," which plan must provide for coordinated actions to be undertaken throughout the State in the event of attack and in the event of other disasters.

(2) Each subgrantee jurisdiction shall have a local EOP which conforms with the requirements for plan content as set forth in CPG 1-3 and CPG 1-8 and CPG 1-8A, and which has been approved by the local chief executive or other authorized official and accepted by the Governor or other authorized State official as being consistent with the State's EOP.

(c) *Annual submission*. Each State should include in its annual CCA application the amount of EMA funding requested (see § 302.5(c)). In order to participate for a particular Federal fiscal year, however, each State must also, within 60 days of receipt or notice of a formal allocation made pursuant to the criteria set forth in § 302.5 and in accordance with procedures and criteria specified in CPG 1-3, submit to the Regional Director an approvable annual submission which includes:

(1) A request or amended request for a financial contribution from FEMA in a specified amount for civil defense personnel and administrative expenses; (see § 302.5 (d) through (h)).

(2) Unless previously submitted for the particular Federal fiscal year, a statement of work for the State and proposed subgrantees or amendments to a statement of work previously submitted under the CCA.

(3) Staffing patterns (including new or revised job descriptions not previously submitted) on forms prescribed by FEMA for the civil defense organizations of the State and proposed subgrantees; and

(4) Any amendments to the State administrative plan required to reflect current status.

(d) *Approval of State administrative plan and annual submission.* If the State administrative plan and the annual submission are determined to be approvable, the Regional Director will so notify the State in writing. The State administrative plan is a one-time submission. Unless amendments are necessary to meet Federal standards prescribed in the regulations in this part or in CPG 1-3 or to reflect changes in the State's administrative structure, procedures, criteria, or activities, or unless a portion were conditionally approved by the Regional Director as provided for in paragraph (e) of this section, no approval regarding the State administrative plan will be required for a State which participated for the preceding Federal fiscal year.

(e) *Agreement for contribution.* Approval pursuant to procedures and criteria described in this part and in CPG 1-3 of an annual submission of a State whose administrative plan is approved and current shall constitute agreement between FEMA and the State as grantee for its participation and that of its subgrantees in this program during the Federal fiscal year covered by the approved annual submission on the basis of the requirements and conditions prescribed in this part, in CPG 1-3, and in other federally promulgated criteria referenced in this part. Refusal or failure to comply with such requirements and conditions may result in the grantor agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received.

(f) *Disapproval or conditional approval.* If a State's administrative plan or annual submission is disapproved, the Regional Director will advise the State in writing, including the reasons for such disapproval and the revisions required for approval. The State shall have 30 days from date of such notification in which to submit its revisions. In the event more time is required in which to place the revisions into effect, the Regional Director may conditionally approve the State administrative plan or annual submission subject to the specified conditions to be met within a specified time, as agreed by the State and FEMA.

(g) *Appeals.* (1) Appeal from a Regional Director's disapproval of a State administrative plan or an annual submission or other final action as unjustified under the criteria in CPG 1-3 may be made by letter to the Associate Director, State and Local Programs and Support (FEMA), signed by an authorized State official and submitted through the Regional Director. Such appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Director within 30 days after receipt of the notification of disapproval. Failure to file its appeal on time may result in withdrawal of the State's allocation and the proposed funding being reallocated by the Director.

(2) A local jurisdiction that regards the final action on its subgrant made by a State as unjustified under the criteria in CPG 1-3 may submit an appeal through the State to the Regional Director. Upon receipt of such an appeal, the Regional Director shall forward the letter, together with all available pertinent documentation from the Regional Director's files and any additional documentation submitted by the local jurisdiction in support of its appeal, to the Associate Director, State and Local Programs and Support, for review and determination. The appeal shall contain all of the exceptions being taken by the State or local jurisdiction, and no exceptions will be determined piecemeal.

(3) No portion of the appellant State's allocation shall be reallocated by FEMA, and no portion of a local jurisdiction's allocation shall be reallocated by the State, pending determination of its appeal by the Director. The State and local jurisdiction (if applicable) will be notified in writing of the Director's decision, including a statement of the reasons therefor.

(Approved by Office of Management and Budget under control number 3067-0138)

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12520, Apr. 11, 1986]

§ 302.4 Merit personnel systems.

(a) *Background.* Section 208 of the Intergovernmental Personnel Act, as amended (42 U.S.C. 4728) authorizes Federal agencies to require, as a condition of participation in Federal assistance programs, systems of a personnel administration consistent with personnel standards prescribed by the Office of Personnel Management (OPM). OPM has promulgated Standards for a System of Personnel Administration (5 CFR Part 900) which prescribe intergovernmental personnel standards on a merit basis as a condition of eligibility in the administration of grant programs. OPM has approved FEMA adoption of these standards by the regulations in this part.

(b) *Standard.* Participation by each grantee and each subgrantee under the program covered in this part is subject to compliance with the following conditions regarding merit personnel systems:

> Methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the civil defense program in conformity with the Standards for a Merit System of Personnel Administration 5 CFR Part 900, which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, section 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to section 208 of the Intergovernmental Personnel Act of 1970 as amended.

Section 302.3(a)(5) of this part provides, in part, that State administrative plans that fail to provide for fulfilling this condition are not approvable.

§ 302.5 Allocations and reallocations.

(a) The Director shall allocate the entire amount of funds available for the purposes of this program from the appropriation for each fiscal year. The allocation made to each State represents the total amount of funds available to pay the Federal share of necessary and essential civil defense personnel and administrative expenses of the State and its participating subdivisions during the fiscal year.

(b) The first calculation for developing the allocation for each State will be a formula distribution in accordance with section 205(d) of the Act, made by applying the following percentages to the total sum of Emergency Management Assistance in the President's budget request to Congress:

(1) Fifty (50) percent will be allocated on the basis of the prior-year State allocations, in fulfilment of the statutory requirement to give due regard to "the relative state of development of civil defense readiness of the State" (State and local levels).

(2) Thirty-three (33) percent will be allocated on the basis of the ratio of the State's population to the national population (50 States, District of Columbia, and Puerto Rico), in fulfilment of the statutory requirements to give due regard to "population" and to "the criticality of target and support areas and the areas which may be affected by natural disasters with respect to the development of the total civil defense readiness of the Nation."

(3) Ten (10) percent will be allocated on the basis of the State's population in EMA participant jurisdictions (county or municipal) as a percentage of the State's total population, in fulfilment of the statutory requirement to give due to regard to "the relative state of development of the civil defense readiness of the State" (local level).

(4) Five (5) percent will be divided equally among the 50 States, the District of Columbia, and Puerto Rico, in fulfilment of the statutory requirement to give due to regard to "the relative state of development of civil defense readiness of the State" (State level).

(5) In consonance with the statutory provision allowing the Director to prescribe other factors concerning the State allocations, the remaining two (2) percent will be held temporarily in reserve, to be used first to fund the four territories of the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Conditions peculiar to those areas make strict application of the mathematical formula in § 302.5(b) inequitable. Therefore, the Director will consider prior-year allocations, percentage of total United States population, and the factors set

out in § 302.5(c) (1), (2), (4) and (5) in determining their allocations. The remaining balance of the reserve fund will constitute a supplemental fund from which the Director will consider State requests for additional funding and the needs of any interstate civil defense authorities. Certain factors to be applicable to the allocation of the reserve fund will be determined and promulgated annually, based upon how such amount may best be used to increase the civil defense capability of the Nation.

(c) For initial planning purposes only, each State will then be informed of the figure by the Regional Director. The State will base its initial EMA application upon that figure but may request a smaller amount or with appropriate justification a larger amount.

(d) The amount requested by the State shall not exceed 50 percent of its estimate of necessary and essential State and local personnel and administrative expenses for the fiscal year.

(e) The formula distribution shall be reviewed and evaluated, and adjusted as appropriate, by the Director, based on the current situation in each State, the requests of all States, and recommendations by the Regional Directors. The Director will consider the following five factors:

(1) The ability of the State and its subgrantees to effectively expend such an amount for necessary and essential civil defense personnel and administrative purposes. Past performance is a factor in this determination.

(2) Special circumstances existing in the State at the time of allocating which require unusual expenditures for civil defense.

(3) Conditions peculiar to the State which make strict application of mathematical formula inequitable either to that State or other States.

(4) The relative cost of civil defense personnel and administrative services in that State; that is, whether such costs are considerably above or below the national average for similar services and expenses.

(5) Substantial changes in the civil defense readiness of the State not reflected by its recent civil defense expenditures.

(f) In September of each year, based on applications received and recommendations by the Regional Directors, the Director will make a tentative allocation to the States. This will include adjustments for States that have indicated they will not be using the total of the formula distribution amount. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) A State may provide to the Regional Director a preliminary annual submission in an amount not to exceed its tentative allocation.

(h) By September 30 (or as soon thereafter as feasible), the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds. This allocation for each State may include any additional amounts from the reserve portion of the EMA funds, and shall be in accordance with the regulations in this part and CPG 1-3.

(i) Upon the appropriation becoming available, and if requested by a State, the Regional Director may approve such State's preliminary annual submission (if found to meet all requirements in this part and CPG 1-3) in an appropriate amount which does not exceed the amount of the State's share of the Director's formal allocation of the Federal appropriation. An award document obligating Federal funds on the basis of the approved preliminary annual submission may be executed in accordance with the provisions of CPG 1-3.

(j) Based on and within 60 days after notification of its formal allocation, each State must provide to the Regional Director a final annual submission which meets all requirements in this part and CPG 1-3. If no changes are necessary, a State and the Regional Director may adopt in writing the State's preliminary annual submission as its final annual submission. If no award document was executed based on a State's preliminary annual submission, such document will be executed on the basis of that State's approved final annual submission.

(k) With regard to any State whose award document was executed pursuant to a preliminary annual submission covering only part of its formal allocation, upon approval (by the Regional Director) of the final annual submission (including a revised statement of work supporting the additional funding request) the Regional Director shall execute an amended award document obligating the balance of such State's formal allocation.

(l) After being advised of its annual formal allocation, if a State fails to submit, within 60 days, an approvable annual submission in the amount of its allocation, the Regional Director may reallocate the unused portion to other States in the region in such amounts as in his/her judgment will best assure adequate development of the civil defense capability of the Nation. The exception to this authority is in the event a State, or local jurisdiction, refuses to participate in attack preparedness activities. EMA funds withheld or returned for that reason are to be released to headquarters for reallocation on a national basis. In addition, the Regional Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

(m) Immediate notice to the headquarters EMA Program Manager of State reallocations is required in the form of copies of EMA-approved Annual Submission amendment documents, accompanied by copies of assistance award/amendment documents signed by regional and State authorized officials of both the releasing and recipient States.

(n) There is no dollar ceiling on the amount of funds that may be reallocated among States in a region. However, at any time that there are funds surplus to the eligible needs of the States within a region, those funds should be promptly released to headquarters for reallocation to other States with unfunded additional requirements.

(o) On July 1 of each fiscal year, the authority to reallocate EMA funds shall revert to the Director. In addition, any excess EMA funds available on that date, or that become available during the remainder of the fiscal year, are to be promptly released to headquarters for reallocation by the Director.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12521, Apr. 11, 1986; 51 FR 43924, Dec. 5, 1986]

§ 302.6 Fiscal year limitation.

Federal appropriations for the program covered by the regulations in this part are limited for obligation on a Federal fiscal year basis. Each annual submission (or amendment thereto) which results in a change in scope (e.g., an increase in the amount of funds other than a cost overrun) must be approved during the Federal Fiscal year for which the funds to be charged were appropriated. Valid expenses incurred by a State or its subgrantee during the fiscal year but before obligation by FEMA of funds under this program may qualify for payment of a Federal financial contribution out of the funds subsequently appropriated for that fiscal year.

§ 302.7 Use of funds, materials, supplies, equipment, and personnel.

Financial contributions provided under the authority of section 205 of the Act are provided for necessary and essential State and local civil defense personnel and administrative expenses as prescribed by the regulations in this part and the provisions of CPG 1-3, and are obligated only on the basis of documentation justifying such need.

(a) *Emergencies*. In addition to such civil defense use, Federal funds obligated under a grantee's approved annual submission may be used, to the extent and under such terms and conditions as prescribed by the Director in CPG 1-3, for providing emergency assistance, including the use of civil defense personnel, organizational equipment, materials, and facilities, in preparation for and response to actual attack-related events or natural disasters (including manmade catastrophies).

(b) *Limitations*. Section 207 of the Act allows use of funds under the Act, including those for this program, for natural (including manmade) disaster preparedness and response purposes only to the extent that such use is consistent with, contributes to, and does not detract from attack-related preparedness (reference 44 CFR Part 312).

§ 302.8 Waiver of "single" State agency requirements.

Section 205 of the Act requires that plans for civil defense of the United States be administered or supervised by a single State agency (50 U.S.C. App. 2286). Notwithstanding such law, section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214) provides authority for the Director as head of the grantor agency, upon the State's request, to waive the single State agency requirement and to approve other State administrative structure or arrangements, upon adequate showing that the requirement prevents the establishment of the most effective and efficient organizational arrangements within the State government. First, however, the Director must have found that the objectives of the Act (50 U.S.C. App. 2251 et seq.) will not be endangered by the use of such other State structure or arrangements. Attachment D of OMB Circular A-102 requires that such requests be given expeditious handling by the grantor agency and that, whenever possible, an affirmative response be made.

[48 FR 44211 Sept. 28, 1983, as amended at 51 FR 12521, Apr. 11, 1986]

PART 303—PROCEDURE FOR WITHHOLDING PAYMENTS FOR FINANCIAL CONTRIBUTIONS UNDER THE FEDERAL CIVIL DEFENSE ACT

Sec.
303.1 Purpose.
303.2 Definitions.
303.3 Scope.
303.4 Notice of intention to withhold payments.
303.5 Notice of hearing.
303.6 Hearings.
303.7 Withholding of payments.

Authority: 50 U.S.C App. 2251 *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12148.

Source: 40 FR 16314, Apr. 11, 1975, unless otherwise noted. Redesignated at 44 FR 56173, Sept. 28, 1979.

§ 303.1 Purpose.

The purpose of the regulation in this part is to establish, pursuant to section 401(h) of the Act, a procedure by which the Director may withhold payments of financial contributions to States or persons, or may limit such payments to specified programs or projects.

§ 303.2 Definitions.

As used herein the following terms shall have the following meanings:

(a) Act. The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 *et seq.*).

(b) *FEMA*. Federal Emergency Management Agency.

(c) *Director*. Director, FEMA.

(d) *State*. The several States, the District of Columbia, Puerto Rico, and the Territories and possessions of the United States.

(e) *Person*. A political subdivision of any State, or combination or group thereof; any interstate civil defense authority established pursuant to section 201(g) of the Act, or any person, corporation, association or other entity of any nature whatsoever, including but not limited to, instrumentalities of States and political subdivisions.

[40 FR 16314, Apr. 11, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979, and amended at 50 FR 40007, Oct. 1, 1985]

§ 303.3 Scope.

(a) Section 401(h) of the Act authorizes the Director to withhold payment of any financial contribution under section 201 or section 205 of the Act to a State or a person, or to limit payments to specified programs or projects upon (1) a finding by the Director of failure by a State or person to expend funds in accordance with the regulations, terms, and conditions established under the Act for approved civil defense plans, programs or projects; and (2) notification to the State or person that certain payments for approved financial contributions will not be made until the Director is satisfied that there will no longer be failure by a State or person to expend funds in accordance with such regulations, terms, and conditions. Prior to the making of such finding and issuance of the notification, the State or person must have been given reasonable notice and opportunity for hearing.

(b) The regulations in this part specify (1) the notice which must be given to a State or person, (2) the procedures for obtaining a hearing, and (3) the terms of the notification to the State or person that further payments will not be made if the Director determines, after notice and hearing that there has been a failure to expend funds in accordance with regulations, terms, and conditions established pursuant to the Act.

§ 303.4 Notice of intention to withhold payments.

(a) Whenever the Director has reason to believe that a State or person has failed to expend funds in accordance with the regulations, terms, or conditions governing a Federal financial contribution established pursuant to the Act, he shall notify the State and person, where applicable, of such fact and of his intention to withhold any further contributions or payments, or contributions or payments for specific programs or projects, unless the alleged failure is satisfactorily explained, or until he is satisfied that there is no longer such failure to comply.

(b) The notice shall specify (1) the date on which he will stop or withhold further payments; (2) the regulations, terms, or conditions which he believes have not been complied with in the expenditure of funds; and (3) the contributions or payments which he intends to withhold; and shall inform the State and person, where applicable, of the right to obtain a hearing.

(c) This notice shall be delivered by certified mail, return receipt requested.

§ 303.5 Notice of hearing.

If, within 15 days after receipt of the notice described in § 303.4, the State or person requests the Director to hold a hearing, the Director will set the matter for hearing. The Director will give the State (and person, where applicable) reasonable notice of the time and place of the hearing.

§ 303.6 Hearings.

(a) Any hearing under this part shall be held before the Director provided that, in his discretion, the Director may designate a hearing officer who will take evidence and certify, to the Director, the entire record, including recommended findings, and a proposed decision.

(b) The State and person, where applicable, shall be given full opportunity to present their position, orally and in writing.

§ 303.7 Withholding of payments.

(a) If after the hearing, or after opportunity therefor, the Director finds that there has been a failure to expend funds in accordance with the regulations, terms, and conditions established pursuant to the Act, the Director will withhold such contributions and payments as he may consider advisable until the failure to expend funds in accordance with the regulations, terms, and conditions has been corrected or he is satisfied that there will no longer be any such failure.

(b) If, upon the expiration of the 15 day period stated in § 303.5, a hearing has not been requested, the Director may issue the finding described in paragraph (a) of this section, and thereupon withhold contributions and payments until he is satisfied that there will no longer be any failure to expend funds in accordance with regulations, terms, and conditions governing a Federal contribution for an approved program or project.

PART 304—CONSOLIDATED GRANTS TO INSULAR AREAS

Sec.

304.1 Purpose.
304.2 Definitions.
304.3 Conditions for a consolidated grant.
304.4 Allocations.
304.5 Audits and records.

AUTHORITY: 50 U.S.C. App. 2251, *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 43 FR 39776, Sept. 7, 1978, unless otherwise noted. Redesignated at 44 FR 56173, Sept. 28, 1979.

§ 304.1 Purpose.

The purpose of the regulations in this part is to prescribe the basis under which the Federal Emergency Management Agency (FEMA) contributes Federal funds to an insular area through a consolidated grant.

§ 304.2 Definitions.

Except as otherwise stated when used in the regulations of this part, the meaning of the listed terms are as follows:

(a) *Insular areas.* The Virgin Islands, Guam, American Samoa, and the Government of the Northern Mariana Islands.

(b) *Consolidated grant.* A grant by FEMA to any insular area through an allocation which combines funds for the State and local management program and the State and local maintenance and services program for a single Federal fiscal year.

(c) *FEMA guidance material.* FEMA regulations (44 CFR Chapter I), Civil Preparedness Guide (CPG) 1-3, and Civil Preparedness Circulars (CPC) as presently providing or hereafter amended or revised.

[43 FR 39776, Sept. 7, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, and amended at 48 FR 44554, Sept. 29, 1983]

§ 304.3 Conditions for a consolidated grant.

(a) In order to participate, an insular area must submit a (one-time) administrative plan as provided for in FEMA guidance material (to be maintained in current status) and must sign a (one-time) civil rights assurance and a (one-time) grant agreement agreeing to comply with Federal requirements.

(b) An insular area need not submit an application for a consolidated grant, but must submit an annual program paper which meets the requirements prescribed in FEMA guidance material.

(c) Funds made available under a consolidated grant must be expended for State and local management program expenses and/or State and local maintenance and services program expenses as defined and described in FEMA guidance material. Each participating insular area will determine the proportion in which funds granted to it will be allocated between the two programs.

(d) Participating insular areas need not provide matching funds for consolidated grants.

[43 FR 39776, Sept. 7, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, and amended at 50 FR 40007, Oct. 1, 1985]

§ 304.4 Allocations.

For each Federal fiscal year concerned, the Director, FEMA, shall allocate to each participating insular area an amount not less than the sum of grants for the two programs which the Director, FEMA, has determined such insular area would otherwise be entitled to receive for such fiscal year.

§ 304.5 Audits and records.

(a) *Audits.* FEMA will maintain adequate auditing, accounting and review procedures as outlined in FEMA guidance material and OMB Circulars No. A-73 and A-102.

(b) *Records.* Financial records, supporting documents, statistical records, and all other records pertinent to a consolidated grant shall be retained for a period of three years from submission of final billing and shall be available to the Director, FEMA, and the Comptroller General of the United States, all as prescribed in FEMA guidance material and in accordance with OMB Circular A-102 (42 FR 45828-45891).

PART 305—[RESERVED]

PART 306—OFFICIAL CIVIL DEFENSE INSIGNE

Sec.
306.1 Purpose.
306.2 Definitions.
306.3 Prescribed insigne.
306.4 Official articles.
306.5 Manufacture, reproduction and display of the prescribed insigne.
306.6 Distribution, issuance, and retail sale of the prescribed insigne.
306.7 Prohibited use of the prescribed insigne.
306.8 Violations.

AUTHORITY: 50 U.S.C. App. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 43 FR 26568, June 21, 1978. Redesignated at 44 FR 56173, Sept. 28, 1979, unless otherwise noted.

§ 306.1 Purpose.

(a) The purpose of the regulations in this part is to prescribe an insigne which may be used by any State or local civil defense organization and by persons engaged in civil defense activities approved by such organizations and to establish requirements for the reproduction, manufacture, display, sale, possession, and wearing thereof.

(b) This does not mean that a State or local civil defense, civil preparedness, or emergency services organization may not, under its own authority, establish and use its own insigne, seal, or similar device. There is no attempt to preempt the field.

§ 306.2 Definitions.

Except as otherwise stated, the following terms shall have the following meanings when used in the regulations in this part:

(a) "Director, FEMA" means the Director, Federal Emergency Management Agency.

(b) "Civil Defense Agency" means a unit of a State or of a political subdivision established pursuant to law and responsible for the development of those activities and measures which are authorized for civil defense organizations either under Federal or State or local law.

(c) "Civil Defense Director" means the person or body having authority over a civil defense agency and any duly authorized designee of such person or body. Such term may refer either to a State Director or to the civil defense director of a political subdivision.

(d) "Official articles" means articles designated as such by the Director, FEMA and embodying the prescribed insigne.

(e) "Organizational equipment" means equipment (other than personal equipment) which the Director, FEMA determines is necessary to a civil defense organization for civil defense purposes and which is of such a nature as to require the contribution of Federal funds, but not including items of equipment which the local community normally utilizes in combating local disasters except when required in unusual quantities dictated by the requirements of civil defense plans.

(f) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 306.3 Prescribed insigne.

(a) The prescribed insigne shall be the design covered under Letters Patent 129797, October 7, 1941, consisting of the "CD" symbol in bright red, centered within a white equilateral triangle superimposed upon a dark blue circle.

(b) The prescribed insigne may be reproduced in the above colors, in black and white, or in the color of the surface upon which reproduced and one other color: *Provided*, That if the color of the surface or the ground is orange, the triangle shall not be blue. The intent of this restriction is that this insigne shall not be confused with the international civil defense sign established in the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Annexes.

(c) Where appropriate, the name of a particular civil defense service, the State, or a political subdivision, may be spelled out in block letters on, in, or immediately surrounding the prescribed insigne.

(d) The dimensions of the components of the prescribed insigne when the blue circle is three inches in diameter will approximate the following: The triangle will be equilateral two and one-quarter inches on a side, each of the letters in the "CD" symbol will be three-sixteenth inches in thickness and will occupy a circle one and one-eighth inches in diameter centered in the triangle. Other sizes of the prescribed insigne will be established by diameter of the blue circle only; to the extent that the diameter of the blue circle is greater or less than three inches, the dimensions of the other components shall be proportionately increased or decreased.

(e) The following alteration or modification of the prescribed insigne is authorized pursuant to § 306.5(d):

Radio Amateur Civil Emergency Service. Superimposed on the official civil defense insigne a white jagged arrow edged in blue resembling a flash of lightning, symbolic of space radiation, containing the inscription "Radio" in blue letters, and extending from the upper right circumference of the blue circle and through the lower left-hand angle of the triangle. Below the triangle and within the blue circle is the inscription "RACES" in white letters.

§ 306.4 Official articles.

(a) Official articles shall consist of the following articles embodying the insigne:

(1) Arm bands.

(2) Badges.

(3) Hat bands.

(4) Helmets.

(5) Pennants, placards, plates, or stickers for aircraft, vehicles, or vessels.

(6) Membership cards.

(b) No person shall possess, display, wear, or use an official article unless such person is authorized to do so by the Director, FEMA or by a Civil Defense Director: *Provided,* That this prohibition shall not apply to the possession or display of official articles by a manufacturer, wholesaler, or retailer in the normal course of business, or to display of pennants, placards, plates, or stickers on aircraft, vehicles, or vessels designated for operational use by a Civil Defense Director.

§ 306.5 Manufacture, reproduction and display of the prescribed insigne.

(a) Any individual, association or business entity may manufacture the prescribed insigne and official articles in compliance with these regulations.

(b) The prescribed insigne may be manufactured, reproduced, and displayed only:

(1) On official articles.

(2) On organizational equipment.

(3) On items of identification issued by a Civil Defense Director to permit necessary movement of persons, vehicles and equipment during a period of emergency operations.

(4) On facilities and equipment designated for emergency operational use by a Civil Defense Director and on devices used for alerting the public in time of emergency.

(5) On official letterheads, publications, posters, signs, advertisements, lapel pins, pennants, placards, flags, banners, certificates of membership and certificates of award used, issued, or authorized by a Civil Defense Agency or Civil Defense Director.

(6) In connection with articles or advertisements in newspapers, magazines, or other publications, or in connection with television or other public information media: *Provided,* Such use is not intended to discredit the Federal Emergency Management Agency or a Civil Defense Agency, or to mislead, confuse, misrepresent, defraud, or does not erroneously confer the impression of endorsement, approval, or relationship to the Federal Emergency Management Agency or a Civil Defense Agency.

(7) On the merit badge for "Emergency Preparedness" designed for and as authorized and awarded by the Boy Scouts of America, together with the reproduction of such merit badge on any publication or certificate of award to be used or issued by said organization in connection therewith.

(8) On such other items, whether official articles or not, as may be designated or approved by the Director, FEMA in writing.

(c) Without limitation of the foregoing, the reproduction of the prescribed insigne in connection with any publication or article used for political purposes is prohibited.

(d) No alteration or modification of the prescribed insigne may be made except as the Director may from time to time authorize.

§ 306.6 Distribution, issuance, and retail sale of the prescribed insigne.

No distribution, issuance, or retail sale of the prescribed insigne or official articles shall be made except upon the authorization of a Civil Defense Director; the Director, FEMA; or in accordance with the regulations in this chapter.

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§ 306.7 Prohibited use of the prescribed insigne.

No person shall possess or wear the prescribed insigne or any other device in colorable imitation thereof with intent to deceive or mislead or for the purpose of inducing the false impression that such person is engaged in the performance of an authorized civil defense service or activity.

§ 306.8 Violations.

The manufacture, possession, or wearing by any person of the prescribed insigne or any device in colorable imitation thereof otherwise than in accordance with these regulations shall be unlawful and shall subject such person to a fine of not more than $1,000 or imprisonment of not more than one year, or both.

PART 307—[RESERVED]

PART 308—LABOR STANDARDS FOR FEDERALLY ASSISTED CONTRACTS

Sec.
308.1 Purpose and scope.
308.2 Definitions.
308.3 Contract award requirements.
308.4 Contract provisions.
308.5 Examination of payrolls.
308.6 Compliance.
308.7 Certification of compliance.

AUTHORITY: 50 U.S.C. app. 2251 *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

EDITORIAL NOTE: Nomenclature change appears at 38 FR 16775, June 26, 1973.

§ 308.1 Purpose and scope.

The regulations in this part are supplemental to those contained in 29 CFR Part 5 and together they prescribe the labor standards applicable to construction work financed with the assistance of a contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) to any State (and political subdivision thereof, where applicable). The regulations in this part, to the extent that they vary from those published in 29 CFR Part 5, have been approved by the Secretary of Labor under 29 CFR Part 5 to meet the particular needs of the Federal Emergency Management Agency. To assure full labor standards compliance reference should be made to the regulations contained in 29 CFR Part 5 as well as those published herein.

[29 FR 12366, Aug. 28, 1964, as amended at 37 FR 2673, Feb. 4, 1972; 40 FR 42736, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.2 Definitions.

Except where otherwise clearly required by the context, each of the following terms shall have the meaning defined in this section when used in the regulations in this part:

(a) *Building or work.* Construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work; including without limitation, buildings, structures, and improvements of all types such as shelters, ramps, roadways, parking lots, tunnels, mains, power lines, pumping and generator stations, terminals, plants, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment is not a "building" or "work" within the meaning of the regulations in this part unless conducted in connection with and at the site of such building or work as defined hereunder.

(b) *Construction.* All types of work done on a particular building or work at the site thereof, including without limitation, altering, repairing, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or the construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work by persons employed by the contractor or the subcontractor.

(c) *Contract.* Any contract which is entered into for actual construction, alteration, or repair, including painting and decorating, of a building or work financed with the assistance of any contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281).

(d) *Employed.* Every person paid by a contractor or subcontractor in any manner for his labor on construction work financed with the assistance of any contribution of Federal funds made under the provisions of section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) is "employed" and receiving "wages," regardless of any contractual relationship alleged to exist.

[29 FR 12366, Aug. 28, 1964. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.3 Contract award requirements.

The obligations of the State, and of any political subdivision joining the State in its application for a Federal financial contribution under section 201(i) or section 205 of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281, 2286), include, without limitation, the following:

(a) The requirement that the State include, verbatim, in each contract involving construction work in excess of $2,000 and cause to be included, verbatim, in each subcontract thereunder, the provisions prescribed in § 308.4 and cause to be attached the applicable wage determination decision of the Secretary of Labor.

(b) The requirement that each advertisement of an invitation to bid shall indicate expressly that if the construction phase of the contract exceeds $2,000:

(1) All laborers and mechanics employed by contractors or subcontractors in performance of the construction work shall be paid wages at rates not less than those determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.), and every such employee shall receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty hours in any work-week, as the case may be, as provided in section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) and in the Contract Work Hours Standards Act (76 Stat. 357) and,

(2) Bid specifications shall contain the labor standards provisions prescribed in § 308.4 of this part and shall have attached thereto the wage determination decision of the Secretary of Labor applicable to the project.

[38 FR 31526, Nov. 15, 1973, as amended at 40 FR 42736, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.4 Contract provisions.

Each contract involving construction work in excess of $2,000 and all subcontracts thereunder shall include as a part thereof the following labor standards provisions, in completed form, verbatim:

(a) *Minimum wages.* (1) All mechanics and laborers employed by the contractor or subcontractor in the performance of construction work hereunder will be paid unconditionally and not less than once a week and without subsequent deduction or rebate on any account, except such payroll deductions as are permitted by the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor, the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particularly weekly period, are deemed to be constructively made or incurred during such weekly period.

(2) The contracting officer of the (write in the name of the State or po-

litical subdivision) shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination, and a report of the action taken shall be sent by the State through the Federal Emergency Management Agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied by the recommendation of the contracting officer of the (write in the name of the State or political subdivision) shall be referred by the State through the Federal Emergency Management Agency to the Secretary of Labor for final determination.

(3) The contracting officer of the (write in the name of the State or political subdivision) shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question accompanied by the recommendation of the contracting officer of the (write in the name of the State or political subdivision) shall be referred by the State through the Federal Emergency Management Agency to the Secretary of Labor for determination.

(4) If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract: *Provided however,* The Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) *Overtime requirements.* (As used in this clause, the terms "laborers" and "mechanics" include watchmen and guards.) No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic to be employed on such work in excess of 8 hours in any calendar day or in excess of 40 hours in any workweek unless such laborer or mechanic receives compensation at a rate of not less than 1½ times his basic rate of pay for all hours worked in excess of 8 hours in any such calendar day or in excess of 40 hours in any such workweek, as the case may be.

(c) *Violations; liability for unpaid wages; liquidated damages.* In the event of any violation of paragraph (a) or (b) of this section the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, in the event of any violation of paragraph (b) of this section, such contractor and subcontractor shall be liable to the United States (in the case of work under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed, with respect to each individual laborer or mechanic (including watchmen and guards) employed in violation of paragraph (b) of this section, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (b) of this section.

(d) *Withholding for liquidated damages and unpaid wages.* The (write in the name of the State or political subdivision) may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (c) of this section. In the event of failure to pay any laborer or mechanic, including apprentices and trainees, employed by the contractor or subcontractor in the performance of construction work hereunder, all or part of the wages required by the contract, the (write in the name of the State or political subdivision) may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased.

(e) *Payrolls and basic records.* (1) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(2) The contractor will submit weekly a copy of all payrolls to the (write in the name of the State or political subdivision) accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a "weekly Statement of Compliance" which is required under this contract and the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the (write in the name of the State and the political subdivision, if any); the Federal Emergency Management Agency; and the Department of Labor; and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the contracting State (or political subdivision, as applicable) that their employment is pursuant to an approved program and shall identify the program.

(f) *Apprentices and trainees*—(1) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in paragraph (f)(2) of this section or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of the journeyman's rate contained in the applicable wage determination.

(2) *Trainees.* Except as provided in 29 CFR 5.15, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(g) *Compliance with Copeland Regulations (29 CFR Part 3).* The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.

(h) *Ineligible bidders.* The contractor herein certifies as a condition of the contract that he is not listed on the Comptroller General's list of ineligible bidders published pursuant to regulations issued by the Secretary of Labor (29 CFR Part 5) and the Davis-Bacon Act, as amended (40 U.S.C. 276a et seq.). This certification shall constitute a warranty, the falsity of which will render void this contract or subcontract, as the case may be.

(i) *Subcontracts.* The contractor will insert in any subcontracts in paragraphs (a) through (h) and (j) of this section and such other clauses as the Federal Emergency Management Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

(j) *Contract termination; debarment.* A breach of any of paragraphs (a) through (i) of this section may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

[40 FR 42736, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.5 Examination of payrolls.

(a) In cases where the contract involves construction work in excess of $2,000, a certified copy of all payrolls and statements required to be submitted under the contract provisions prescribed in § 308.4, shall be checked by the State (or political subdivision, as applicable) against the applicable wage determination decision of the Secretary of Labor to verify labor standards compliance and to ascertain the following:

(1) That the rates paid to various classifications of employees are in conformity with the applicable wage determination decision.

(2) That each classification shown in the payrolls is a classification for which a rate was predetermined in the applicable wage determination decision.

(3) That there are included in the payrolls those classifications of workers who would logically perform the work performed during the weeks in question.

(4) That there is no disproportionate employment of laborers, helpers, apprentices or trainees.

(b) Unless transferred to the Federal Emergency Management Agency, the payrolls and statements shall be preserved by the State (or political subdivision, as applicable) for a period of three years from the date of completion of the contract and shall be produced at the request of the Secretary of Labor at any time during the three-year period.

[40 FR 42738, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.6 Compliance.

In cases where the contract involves construction work in excess of $2,000:

(a) The State shall make (or cause the political subdivision to make) an "on the site" labor standards check, at least once during the project and at least every six months on projects of long duration, including without limitation the following:

(1) Interviewing of a representative number of employees including but not necessarily limited to one employee in each classification or craft to ascertain what work the employee is doing and his regular rate of pay. This information shall be checked against the payrolls and the applicable wage determination decision to verify compliance or noncompliance.

(2) Examining evidence of registration and certification with respect to apprenticeship and training plans to determine the correctness of classifications and any disproportionate employment of laborers, helpers, apprentices or trainees.

(b) In conducting investigations, including those of complaints of alleged violations (which shall be given priority) all statements, written or oral, made by an employee are to be treated as confidential and shall not be disclosed to his employer without the consent of the employee. All indications, including but not limited to all complaints, of alleged violations of labor standards brought to its attention shall be investigated by the State (or political subdivision at the State's direction) and the State shall require that all such indications brought to the attention of a political subdivision shall be forthwith brought to the attention of the State.

(c) If there is evidence of labor standards noncompliance, restitution shall be required of the contractor or subcontractor and the State (or political subdivision, as applicable) shall, after written notice to the contractor, withhold from the contractor such advances, guarantees and accrued payments as are administratively determined necessary to cover any liquidated damages and the restitution due laborers and mechanics employed by the contractor or subcontractor. The State (or political subdivision, as applicable) also has the option of terminating the contract in accordance with its provisions. If there is evidence that these violations were aggravated, willful or resulted in underpayments of $500 or more, a detailed report, including information as to restitution made, payments, advances and guarantees of funds withheld, contract terminations, and the name and address of each laborer and mechanic and contractor or subcontractor affected, and the day or days of such violations, shall be submitted by the State to the Federal Emergency Management Agency.

Except where the Federal Emergency Management Agency has expressly requested that the investigation be made, no report need be made where the underpayments total less than $500, if nonwillful, restitution has been made and the State has received assurance of future compliance.

[29 FR 12366, Aug. 28, 1964, as amended at 40 FR 42738, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

§ 308.7 Certification of compliance.

(a) After the beginning of construction (under a contract involving construction in excess of $2,000), no payment or advance to the contracting State (or where applicable, to the contracting political subdivision) shall be approved by the Federal Emergency Management Agency unless and until it has received a certification by the contractor that his contract and those of his subcontractors contain the provisions prescribed in § 308.4 and that he and his contractors have complied therewith, or that there is a substantial dispute with respect to the required provisions.

(b) Before making final payment on any contract involving construction work in excess of $2,000, the State (or political subdivision, as applicable) shall submit to the Federal Emergency Management Agency the following certification, verbatim, in completed form:

CERTIFICATE OF LABOR STANDARDS COMPLIANCE

Knowing that my statements will be relied upon by the Federal Emergency Management Agency, in its payment to the State under an approved project application for a Federal financial contribution under section 201(i) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2281) I do hereby certify as follows:

1. That I am the Contracting Officer of ——— (write in the name of the political subdivision and/or State, as applicable), applicant under Federal Emergency Management Agency, Project Application No. ———.

2. That in my official capacity I have personally, or through authorized employee(s) of the above named applicant for purposes of this certification, completed the following: (i) Examinations of all contracts involving construction work in excess of $2,000 on the civil defense project covered by the aforementioned project application, and all subcontracts thereunder; (ii) examinations of all payrolls and statements required to be submitted under such contracts and comparison with the applicable wage determination decision of the Secretary of Labor as required by § 308.5 of Subchapter E, Chapter I, of Title 44 of the Code of Federal Regulations; and (iii) investigations of all indications of alleged labor standards violations including, without limitation, at least one "on the site" labor standards check, and other investigations as required by § 308.6 of Subchapter E, Chapter I, of Title 44 of the Code of Federal Regulations.

3. That, based upon the aforementioned examinations and investigations, I have determined that: (i) The labor standards provisions have been included and the applicable wage determination decision has been attached, all as a part of the conditions of each contract involving construction work in excess of $2,000 and all subcontracts thereunder as required by § 308.4 of Subchapter E, Chapter I, of Title 44 of the Code of Federal Regulations; and (ii) the contractor and all subcontractors were in compliance, or have come into compliance, with the labor standards provisions, wage determination decision and Copeland Regulations (29 CFR Part 3) except ——— (List names of all contractors not in compliance or if no exceptions, state "none") and $——— restitution is due to the employees of the listed contractor and/or subcontractors (set forth the amount or "none," in accordance with the facts).

——— (LS)

———

(Name of Contracting Officer)

———

(Name of State or political subdivision)

———

(Dated)

[40 FR 42738, Sept. 16, 1975. Redesignated at 44 FR 56173, Sept. 28, 1979]

PARTS 309—310 [RESERVED]

PART 311—FEDERAL EMPLOYEE EMERGENCY IDENTIFICATION CARD

Sec.

311.1 Purpose.
311.2 Background.
311.3 Description of card.
311.4 Authorized agencies.
311.5 Issuance criteria.
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311.7 Responsibilities.

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311.8 Related functions of Director of the Federal Emergency Management Agency.
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AUTHORITY: 50 U.S.C. App. 2251, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12148.

SOURCE: 45 FR 43200, June 26, 1980, unless otherwise noted.

§ 311.1 Purpose.

The purpose of the regulation in this part is to establish a uniform identification system for Federal employees designated to perform essential duties during an emergency as described in § 311.2 of this part.

§ 311.2 Background.

Upon an attack on the United States, or upon a declaration by the President, or the Congress, or by a Federal Government official duly authorized by the President or the Congress, that an emergency situtation exists due to an expected attack on the United States or a natural or man-caused disaster occurs, or is expected within the United States, Federal employees, who have been assigned emergency duty functions, are expected to be in need of freedom of movement in order to report for and carry out their emergency assignments. To facilitate such mobility and freedom of movement, a uniform means of identification is required to enable State and local civil defense authorities and law enforcement officials to readily recognize such Federal employees. Accordingly, this part establishes a standard identification card prescribed for issuance by authorized Federal departments, agencies and officials, in accordance with definitive issuance criteria, to Federal emergency employees.

§ 311.3 Description of card.

A red-bordered, laminated, numbered identification card, overall size 2⅜ inches x 3⅜ inches, has been prescribed for this purpose. Printed on the face in the top red-border in black type are the words, "Federal Employee Emergency." The left part of the card contains the seal of the Federal Emergency Management Agency. The right portion of the card contains a photograph of the holder (black and white or color photograph is acceptable) and, immediately under the photograph, the holder's name, signature and emergency function appear. To the right of the photograph, the holder's date of birth, height, weight, color of hair, color of eyes, and blood type appears. The bottom red border contains the words, "Identification Card" in black type. The reverse side of the card contains in the left portion the following:

> The person described on this card has essential emergency duties for the Federal Government. Request full assistance and unrestricted movement be afforded the person to whom this card is issued.

This is overprinted on the Federal Emergency Management Agency logo. Immediately under this appears the name of the issuing agency, followed by the signature and title of the issuing official. The lower bottom portion contains a pre-printed card number, date of issue, expiration date, and FEMA form number. The upper left part of this reverse side of the card contains the Government penalty statement on misuse, counterfeiting or alteration of the card. Immediately below this, the return postage guarantee statement appears.

§ 311.4 Authorized agencies.

(a) The departments, agencies and Federal officials listed below are authorized to issue the identification card described in this part:

Executive Departments

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of Treasury

Agencies

Environmental Protection Agency
Export-Import Bank of the United States

Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Emergency Management Agency
Federal Home Loan Bank Board
Federal Mediation and Conciliation Service
Federal Reserve Board
General Services Administration
Government Printing Office
Interstate Commerce Commission
National Aeronautics and Space Administration
National Communications System
National Credit Union Administration
National Labor Relations Board
National Mediation Board
National Science Foundation
National Telecommunications and Information Administration
Nuclear Regulatory Commission
Office of Personnel Management
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Small Business Administration
Tennessee Valley Authority
U.S. Information Agency
U.S. International Trade Commission
U.S. Postal Service
Veterans Administration

Executive Office of the President

Central Intelligence Agency
Council of Economic Advisors
Council on Environmental Quality
National Security Council
Office of Administration
Office of Management and Budget
Office of Policy Development
Office of Science and Technology Policy
Office of the United States Trade Representative
White House Office

Office of the Vice President

The White House Military Office for the White House Office Staff and the Vice President's Staff
The Clerk, United States Supreme Court
The Director, Administrative Office of the United States Courts for the Judicial Branch of the Federal Government
The Architect of the Capitol, for the Legislative Branch of the Federal Government.

(b) *Additions to the authorized list.* Departments, agencies or Federal officials not included in the list of this section may request the Director of the Federal Emergency Management Agency to authorize use of the identification card prescribed by this regulation. Approval of such requests will be based on adequate justification of the need for such identification.

[45 FR 43200, June 26, 1980; 45 FR 59880, Sept. 11, 1980, as amended at 48 FR 44545, Sept. 29, 1983; 50 FR 40007, Oct. 1, 1985]

§ 311.5 Issuance criteria.

(a) The identification card described in § 311.3 will be issued by authorized departments and agencies to Federal employees designated to perform emergency duties for the Federal Government at an emergency duty assignment following the declaration of an emergency as described in § 311.2.

(b) The identification card will be issued for a period not to exceed five years. The expiration date will be indicated on the card.

§ 311.6 Procedure for procurement of Federal Emergency Management Form 12–11.

(a) Each department, agency and official listed in § 311.4, and those later approved by the Director of the Federal Emergency Management Agency for inclusion under the provisions of this part, will review the issuance criteria prescribed in § 311.5 and determine the number of Federal employees requiring a Federal Employees Identification Card.

(b) The name of the department, agency or official issuing the identification card shall not be printed on the card. Each issuing department, agency and official will be responsible for assuring that all spaces on the cards are properly filled in by typewriter.

(c) Blank identification cards will be prenumbered in sequence, beginning with "1001." Issuance control will be maintained by the Director, Administrative Support. The cards will be stocked and issued as controlled items. Issuance will be restricted to the department, agencies and officials authorized in § 311.4 to issue such cards. The Director, Administrative Support will maintain records of such issues, and upon request, provide data on total cumulative issues to the FEMA National Preparedness Programs Directorate and to Emergency Operations.

(d) Each authorized issuing department, agency and official will submit a separate purchase order for necessary supplies of FEMA Form 12–11 to the FEMA Emergency Operations, who will approve/disapprove the order for the processing and delivery.

[45 FR 43200, June 26, 1980 as amended at 47 FR 13150, Mar. 29, 1982; 48 FR 44545, Sept. 29, 1983; 50 FR 40007, Oct. 1, 1985]

§ 311.7 Responsibilities.

Each department, agency or official authorized to issue the prescribed emergency identification card is responsible for:

(a) Strict adherence to the established issuance criteria prescribed in § 311.5. These cards may be issued only to Federal employees designated to perform emergency duties.

(b) Completion of entries and affixing of photographs, laminating the cards, and maintaining records to enable the issuing official to trace the card to the individual to whom it is issued.

(c) Maintaining an accountability record of all blocks of cards received. An entry indicating ultimate disposition of the card by the activity will be required.

(d) Maintaining a record indicating the card numbers, dates and names of all personnel to whom the card has been issued.

(e) Reviewing annually the assignments of all personnel to whom such cards have been issued, to determine if the holders continue to qualify under the prescribed issuance criteria.

(f) Recalling cards issued to personnel whose emergency assignments are withdrawn. Cards recalled need not be cancelled.

(g) Insuring that cards issued to personnel required to report to a State control center or other locally controlled emergency center are authenticated by the appropriate State or local official to permit access to such centers in an emergency.

(h) Maintaining records and reporting upon request to the Director of the Federal Emergency Management Agency, the following:

(1) The number of cards issued and outstanding to Federal; employees.

(2) The card numbers and names of personnel to whom the cards have been issued.

(3) Total number of cards recalled and in safekeeping.

(4) Total number of cards destroyed.

(5) Total number of cards lost or unaccounted for.

(6) Cards available for issue.

(i) Regaining possession of and destroying all FEMA Form 12-11's from personnel whose employment with the issuing agency has ceased.

(j) Providing FEMA with copies of any directives published to implement the provisions of this regulation.

§ 311.8 Related functions of Director of the Federal Emergency Management Agency.

(a) Assure that all Federal authorities are familiar with and will recognize the emergency identification cards issued under the provisions of this part.

(b) On an annual basis, request the State Civil Preparedness Directors to bring this part to the attention of local civil authorities, and all law enforcement officials.

(c) Act on requests of departments, agencies and Federal officials who apply for authority to issue the identification card to employees designated to perform emergency duties.

(d) Periodically review the criteria and controls established by this part and issue revisions, as necessary.

(e) Review reports submitted on number of cards issued or outstanding and where necessary, request additional information on the need for the number of cards issued by a department, agency or official.

§ 311.9 Exceptions from coverage.

Active and reserve military Coast Guard personnel, and officers of the Commissioned Corps of the U.S. Public Health Service, in or out of uniform under orders to report to an emergency duty post or installation, will not be provided the identification card prescribed by this part. Such personnel will rely on the identification provided by the appropriate military department.

[45 FR 43200, June 26, 1980; 45 FR 59[illegible] Sept. 11, 1980]

§ 311.10 Effective date.

June 26, 1980.

PART 312—USE OF CIVIL DEFENSE PERSONNEL, MATERIALS, AND FACILITIES FOR NATURAL DISASTER PURPOSES

Sec.
312.1 Purpose.
312.2 Definitions.
312.3 Policy.
312.4 General.
312.5 Personnel.
312.6 Materials and facilities.

AUTHORITY: Sec. 803(a)(3) Pub. L. 97-86; sec. 401, Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2253; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp. p. 329; and E.O. 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 47 FR 43381, Oct. 1, 1982, unless otherwise noted.

§ 312.1 Purpose.

The purpose of the regulations in this part is to prescribe the terms and conditions under which civil defense personnel, materials, and facilities, supported in whole or in part through contributions under the Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2251, *et seq.*, hereinafter referred to as "the Act", may be used for natural disasters, to the extent that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.

§ 312.2 Definitions.

Except as otherwise stated, when used in the regulations in this part, the meaning of the listed terms are as follows:

(a) The term "attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by use of bombs, shellfire, or atomic-radiological, chemical, bacteriological, or biological means or other weapons or processes;

(b) The term "natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, or other catastrophe in any part of the United States which causes, or which may cause, substantial damage or injury to civilian property or persons and, for the purposes of the Act, any explosion, civil disturbance, or any other manmade catastrophe shall be deemed to be a natural disaster;

(c) The term "civil defense" means all those activities and measures designed or undertaken (1) to minimize the effects upon the civilian population caused, or which would be caused, by an attack upon the United States, or by natural disaster, (2) to deal with the immediate emergency conditions which would be created by any such attack, or natural disaster, and (3) to effectuate emergency repairs to, or the emergency restoration of vital utilities and facilities destroyed or damaged by any such attack or natural disaster. Such term shall include, but shall not be limited to, (i) measures to be taken in preparation for anticipated attack or natural disaster (including the establishment of appropriate organizations, operational plans, and supporting agreements; the recruitment and training of personnel; the conduct of research; the procurement and stockpiling of necessary materials and supplies; the provision of suitable warning systems; the construction or preparation of shelter areas, and control centers; and, when appropriate, the non-military evacuation of civil population); (ii) measures to be taken during attack or natural disaster (including the enforcement of passive defense regulations prescribed by duly established military or civil authorities; the evacuation of personnel to shelter areas; the control of traffic and panic; and the control and use of lighting and civil communications); and (iii) measures to be taken following attack or natural disaster (including activities for firefighting; rescue, emergency medical, health and sanitation services; monitoring for specific hazards of special weapons; unexploded bomb reconnaissance; essential debris clearance; emergency welfare measures; and immediately essential emergency repair or restoration of damaged vital facilities);

(d) The word "materials" shall include raw materials, supplies, medicines, equipment, component parts and technical information and processes necessary for civil defense;

(e) The word "facilities", except as otherwise provided herein, shall include buildings, shelters, utilities, and land;

(f) The term "United States" or "States" shall include the several States, the District of Columbia, the Territories, and the possessions of the United States;

(g) The term "political subdivisions" shall include local governments, including but not limited to cities, towns, incorporated communities, counties, parishes, and townships; and

(h) The term "CPG 1-3" refers to FEMA's "Federal Assistance Handbook" promulgated as Civil Preparedness Guide (CPG) 1-3, as amended, by numbered changes thereto and by Civil Preparedness Circulars (CPC). CPG 1-3 sets forth detailed guidance on procedures which a State and, where applicable, its political subdivisions must follow in order to request financial assistance from FEMA. It also sets forth detailed requirements, terms, and conditions upon which financial assistance is granted.

(Reorganization Plan No. 3 of 1978, E.O. 12127 and E.O. 12148)

[47 FR 43381, Oct. 1, 1982, as amended at 48 FR 44545, Sept. 29, 1983]

§ 312.3 Policy.

(a) It is the policy of FEMA to provide a means of assistance to States and their political subdivisions in their carrying out responsibilities to alleviate the suffering and damage from attack-related or natural disasters by:

(1) Providing contributions for personnel, equipment, materials and facilities that may be used in preparing for or responding to disasters, provided that the use of such funds for natural disasters is consistent with, contributes to, and does not detract from attack-related civil defense preparedness.

(2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the State and its political subdivisions.

(3) Assisting in achieving greater coordination of disaster preparation and response programs.

(4) Providing technical advice and guidance to States and their political subdivisions for organizing and preparing to meet the effects of disasters.

(b) These regulations are not to be interpreted as authorizing States and their political subdivisions to request or receive additional assistance relating to particular disaster incidents.

§ 312.4 General.

(a) The Director, FEMA, will provide statements to States and their political subdivisions concerning Agency mission and goals, Annual Program Emphasis, and other directions, instructions, and technical guidance which together specify preparedness and response activities for both attack-related and natural disasters.

(b) States and their political subdivisions may apply to FEMA for financial assistance under the Act in a manner prescribed by Federal Regulations governing grants and cooperative agreements. Such applications must be compatible with FEMA's goals and requirements described in paragraph (a) of this section.

(c) Financial contributions to States and their political subdivisions are made by FEMA based on approval of the activities and projects described in the Annual Program Paper, and/or Comprehensive Cooperative Agreement, and which are in conformance with provisions of CPG 1-3, and applicable FEMA regulations set forth in Chapter 1 of this Title 44, Chapter 1, Subchapter E, of the Code of Federal Regulations. Financial contributions will not be made unless substantive activities and projects in preparation for and response to attack-related disasters are identified, and progress is indicated in the submissions, and recorded in program reporting systems. The presence of unavoidable circumstances, and the good faith effort of the applicant, will be considered if certain objectives are not met.

(d) State and local officials may use personnel, equipment, and facilities for natural disasters outside the physical boundaries of the jurisdiction and under the conditions stated within this regulation.

(e) Specific criteria relating to the preparedness and response activities are given in §§ 312.5 and 312.6 of this part.

§ 312.5 Personnel.

FEMA contributes to the development and support of emergency management organizations in the States and their political subdivisions, and to the development, operation, and maintenance of specific programs, through payment of salaries and benefits of State and local civil defense staff, and the payment of administrative expenses and travel, not to exceed 50 percent. FEMA also provides contributions for training and education expenses. The following use of such personnel for natural disaster purposes is allowable provided that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness:

(a) In developing, maintaining, testing and exercising plans, systems, and procedures for the protection of people and property from the effects of attack-related disasters, States and their political subdivisions may include and provide for natural disasters.

(b) Personnel supported in part through contributions under the Act may be assigned responsibilities for preparation for and response to natural disasters in any specific emergency occurring in a State or its political subdivisions as determined by the responsible State or local officials, respectively.

(c) Personnel supported in whole under the Act, may be assigned to emergency response operations for 15 days at the discretion of State officials; approval of the FEMA Regional Director is required for the use of these personnel in excess of 15 days. An assignment to emergency response operations does not preclude the accomplishment of program work and objectives. Failure to accomplish such work may subject the State to the withholding of funds contributed under the Act, or to collection of funds already obligated, not to exceed the estimated cost of the work not performed, as determined by the Regional Director.

(d) In the event of an emergency or major disaster declared under the Disaster Relief Act of 1974, as amended, personnel will not be provided overtime compensation and expenses under the Act.

§ 312.6 Materials and facilities.

FEMA also contributes to the development and support of emergency management in the States and their political subdivisions, and to the development, operation, and maintenance of specific programs, through providing certain materials and facilities. The following may be used for natural disaster purposes provided that such usage is consistent with, contributes to, and does not detract from attack-related civil defense preparedness:

(a) Materials provided and maintained through contributions under the Act.

(b) Technical information, guidance through which technical assistance is provided, and training courses, may contain examples, illustrations, discussion, suggested applications and uses of material.

(c) Equipment loaned under provisions of the Contributions Project Loan Program.

(d) Facilities, such as Emergency Operating Centers, provided and maintained through contributions under the Act.

(e) Equipment loaned or granted to the States for civil defense purposes (e.g., radiological instruments, shelter supplies).

PARTS 313—319 [RESERVED]

PART 320—DISPERSION AND PROTECTIVE CONSTRUCTION: POLICY, CRITERIA, RESPONSIBILITIES (DMO–1)

Sec.

320.1 Policy.
320.2 Criteria.
320.3 Responsibilities.

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; E.O. 12148, 44 FR 43239.

Source: 45 FR 44575, July 1, 1980, unless otherwise noted.

§ 320.1 Policy.

It is the policy of the United States to encourage and, when appropriate, to require that new facilities and major expansions of existing facilities important to national security be located in so far as practicable, so as to reduce the risk of damage in the event of attack; and to encourage and, when appropriate, require the incorporation of protective construction features in new and existing facilities to provide resistance to weapons effects suitable to the locations of said facilities.

§ 320.2 Criteria.

(a) The distance of a facility from the probable area of destruction is the controlling factor in reducing the risk of attack damage to such facility. In determining the appropriate distance consideration will be given to all relevant factors, including:

(1) The most likely objects or targets of enemy attack, such as certain military, industrial, population, and governmental concentrations.

(2) The size of such targets.

(3) The destructive power of a large yield weapon or weapons suitable to the particular target.

(4) The gradation of pressures and thermal radiation at various distances from an assumed point of detonation.

(5) The characteristics of the proposed facility, including underground and built-in protective construction features, with respect to its resistance to nuclear, chemical, and unconventional weapons.

(6) The degree of damage which a facility could sustain and still remain operable.

(7) The ground environment or natural barriers which might provide added protection to the facility.

(8) The economic, operational, and administrative requirements in carrying out the function for which the facility is to be provided.

(b) While no single distance standard and no single set of protective construction specifications against nuclear, chemical and unconventional weapons are feasible for all situations, the above factors will be applied so as to achieve the most protection practicable for a specific situation.

§ 320.3 Responsibilities.

(a) All departments and agencies of the Executive Branch of the Federal Government are responsible for adherence to the policy and criteria herein set forth with respect to programs under their control. Without limitation, specific reference is made to the following:

(1) All agencies:

(i) Programs for minimizing the vulnerability of the mobilization base (DMO I-4, paragraph 17);

(ii) Consideration of dispersed location and protective construction in the review of application for tax amortization (DMO III-1, paragraphs 4 and 5);

(iii) Application of Dispersion Standards to Facilities of the Executive Branch, in accordance with policy and standards issued by the Director, Federal Emergency Management Agency.

(2) Department of Defense—Programs for maximum use of dispersed plants, and development of standards for strategic locations and physical security. (DMO I-12, paragraph 2, g, h, and o.)

(3) Department of the Interior—Programs for continuity of production of certain assigned industries.

(4) Department of Agriculture—Programs for operation of vital food facilities.

(5) Department of Commerce—Programs for dispersion and continuity of production.

(6) Federal Emergency Management Agency—Development and coordination of plans and programs for the reduction of urban vulnerability.

(b) The Department of Commerce is responsible for providing guidance and assistance to departments and agencies of the Federal Government, to industry, public and private persons and organizations including local Dispersion Committees, in the application of the policy and criteria contained herein.

(1) By agreement between the Department of Defense and the Department of Commerce, Department of Defense will provide guidance on certain industrial and other non-military

projects in which it has a direct and special interest.

(2) The Department of Commerce may make similar arrangements with other departments and agencies to provide guidance on projects in which they have a direct and special interest, provided that reasonable safeguards to assure consistency and uniformity in the application of the policy and standards are maintained.

(3) The Department of Defense is responsible for the application of this policy to military projects without consultation with the Department of Commerce, but with due regard to the location of other vital facilities and plans for reduction of urban vulnerability as developed by the Federal Emergency Management Agency.

(c) The Federal Emergency Management Agency, responsible for the development and coordination of plans and programs for the reduction of urban vulnerability, is responsible for integrating at the metropolitan target zone level dispersion actions with all other measures which can make urban areas less attractive targets. It is also responsible for promulgating construction standards and specifications for the protection of persons and property from nuclear and unconventional weapons effects. The Department of Commerce and all others concerned will be governed by such standards in rendering the guidance and assistance described in paragraph (b) of this section.

PART 321—MAINTENANCE OF THE MOBILIZATION BASE (DEPARTMENT OF DEFENSE, DEPARTMENT OF ENERGY, MARITIME ADMINISTRATION)

Sec.
321.1 General.
321.2 Selection of the mobilization base.
321.3 Maintaining the mobilization base.
321.4 Achieving production readiness.
321.5 Retention of industrial facilities.
321.6 Participation of small business.
321.7 [Reserved]
321.8 Reports.

AUTHORITY: National Security Act of 1947, as amended 50 U.S.C. 404; Defense Production Act of 1950, as amended; 50 U.S.C. App. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; E.O. 12148 (44 FR 43239).

SOURCE: 45 FR 44576, July 1, 1980, unless otherwise noted.

§ 321.1 General.

A sustained state of mobilization production readiness is necessary to place the United States in a defense posture which will enable the nation to defend itself against aggression in peripheral conflicts or general war involving nuclear attacks on this country. Therefore, the facilities, machine tools, production equipment, and skilled workers necessary to produce the wartime requirements of the Department of Defense, Department of Energy, and the Maritime Administration shall be maintained in a state of readiness which will facilitate their immediate use or conversion in time of emergency, with especial emphasis on measures to maximize the probability of continued post-attack production of those items judged to be vital to survival and victory.

§ 321.2 Selection of the mobilization base.

(a) The Department of Defense shall select, for its mobilization base, facilities which produce or are capable of producing critically important military items or components (military class A components used entirely in the production, maintenance, or repair of military items) which meet one of the following:

(1) Those items which would be so urgent to the defense of this country that utmost effort must be exerted to produce them even in case of general

war involving severe damage to the facilities necessary to produce these items and the components thereof.

(2) Those items essential to survival and retaliation, maintenance of health, or combat efficiency required to support peripheral war and which meet one or more of the following criteria:

(i) Items requiring a long lead-time or long manufacturing cycle.

(ii) Items currently not in production or which are required in quantities far in excess of peacetime production.

(iii) Items requiring the conversion of an industry or a number of plants within an industry.

(iv) Items requiring materials or manufacturing processes essentially different from those in current use.

(v) Items for which industry does not have production experience.

Paragraph (a)(2) of this section is inclusive of the Department of Defense Preferential Planning List of End Items.

(b) In selecting facilities for the Department of Defense mobilization base, consideration shall be given to their vulnerability to nuclear attack, with particular attention to the possibility of (1) minimizing vulnerability of facilities producing "urgent" items under paragraph (a)(1) of this section, including the need for dispersal, protective construction, and special security measures to safeguard against sabotage of clandestine attack, and (2) reducing concentration of uncommon critical production facilities so that a productive segment of each critical industry would be likely to survive a nuclear attack.

(c) The Department of Energy and the Maritime Administration, in cooperation with the Federal Emergency Management Agency, shall determine the items and facilities which meet the above criteria for their respective programs for maintaining the mobilization base.

§ 321.3 Maintaining the mobilization base.

(a) Facilities selected to produce "urgent" items shall be maintained within limits of existing procurement authority and funds available by the Department of Defense, the Department of Energy, and the Maritime Administration in the following manners to the maximum practical degree:

(1) Current procurement shall be placed in these facilities to the extent which will maintain them in a state of readiness compatible with the plans of the procuring agency.

(2) Machine tools and production equipment will be installed in these facilities to the extent found necessary by the procuring agency.

(3) Develop and maintain plans for alternate production capacity in case disaster destroys current facilities, such capacity to be located to the maximum extent possible away from highly concentrated industrial areas and major military installations.

(b) Other facilities selected as part of the mobilization base, shall be maintained to the fullest extent possible.

(1) Procurement agencies shall integrate current procurement with their industrial mobilization plans to the greatest possible extent with the objective of supporting the mobilization base within authorities and funds available.

(2) Data assembled on essential mobilization suppliers by the industrial mobilization planning of these agencies shall be used in planning current procurement. The policy of using contractors and facilities essential to the mobilization base is considered to be in the best interest of the Government.

(3) Planned producers that are deemed to be a part of the mobilization base will be invited to participate in appropriate current procurement.

(4) Upon expiration of current procurement contracts in a facility, the procuring agency shall take such of the following actions as are compatible with its plans for maintaining a state of readiness:

(i) *Government-owned facilities and tools.* Within the limitations that may be imposed by Congressional appropriations, place government-owned facilities and tools in standby status and establish provisions for their adequate maintenance. This does not preclude the use of government-owned production equipment, on a loan basis, to enable the military departments to meet current production schedules, as provided in DMO-VII-4, Amendment 1.

(ii) *Privately-owned facilities and government-owned tools.* (A) Arrange with management of privately-owned facilities, wherever possible, to place government-owned tools and production equipment in the status provided by DMO-VII-4, as amended, taking into account the desirability of safe location.

(B) Arrange with management, on a voluntary basis, to keep a group of key managers, engineers, and skilled workers familiar with the items planned for mobilization production.

(C) Determine the gaps which exist in government-owned packages of tools and production equipment needed to produce mobilization requirements in privately-owned plants. Within the limit of fund availability, plan the procurement of such tools and equipment with priority being given to long lead-time tools and equipment or those not used in general manufacturing. These tools and equipment, when procured, should be placed in the status provided by DMO-VII-4, as amended, taking into account the desirability of safe locations.

(D) Determine which government-owned tools and equipment have become obsolete, or which would not be used in event of mobilization, and plan for their disposal in accordance with the provisions of DMO-VII-4, as amended.

§ 321.4 Achieving production readiness.

(a) In order to achieve a capability for maximum production of "urgent" items during the initial phase of war, the following readiness measures shall be taken where advisable for facilities producing such items:

(1) Establishment of emergency production schedules.

(2) Development of a production capability which would function under widespread disruption and damage imposed by enemy attack, including, where necessary:

(i) Maintenance of an increased inventory of finished components and related production supplies at assembly plants, or arrangements for alternative supply lines where increased inventories are not feasible.

(ii) A capability to carry on urgent production without dependence on additional personnel, external sources of power, fuel, and water, or on long-distance communications; with spare replacements for highly vulnerable or unreliable parts of production equipment.

(iii) Protection of production facilities from enemy sabotage through adequate physical security measures.

(iv) Protection of personnel from widespread radiological fallout through provisions for decontamination and shelter.

§ 321.5 Retention of industrial facilities.

(a) Industrial properties, owned by the Department of Defense, the Department of Energy, and the Maritime Administration, shall be retained in the Industrial reserves (National Industrial Reserve, Departmental Industrial Reserve for the Department of Defense) of the department and agencies to the extent the capacity of said reserves is necessary for the production of defense or defense-supporting end items, materials or components in a mobilization period.

(b) Each idle plant in the reserves shall be reviewed annually by the heads of the respective agencies to determine if the capacity of the plant continues necessary for mobilization purposes.

(c) Upon the determination by the head of the agency that the capacity of a plant is excess to the mobilization requirements of the agency immediate steps will be taken to dispose of the plant through existing government channels for surplus disposal. The Federal Emergency Management Agency shall be informed by General Services Administration of each proposed surplus action prior to final determination.

§ 321.6 Participation of small business.

The agencies concerned with the order shall, in all of their programs for maintaining the mobilization base, be mindful of the national policy to protect the interests of small business, and to assure the maximum participation of small business in the mobilization base, including current procurement.

§ 321.7 [Reserved]

§ 321.8 Reports.

The Department of Defense, Department of Energy, and Maritime Administration shall furnish the Director of the Federal Emergency Management Agency with reports on items and facilities for programs under § 321.2 (a) and (b) of this part, and with such other periodic and special reports as he may require affecting the maintenance of the mobilization base.

PART 322—DEFENSE PRODUCTION: PRIORITIES AND ALLOCATIONS AUTHORITY (DMO-3)

Sec.
322.1 Purpose.
322.2 Policies.
322.3 Delegation of authority.

AUTHORITY: Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; E.O. 12148, 44 FR 43239.

§ 322.1 Purpose.

This order:

(a) Establishes policy guidance in accordance with section 101 of Executive Order 10480 and sections 1-103 and 5-202 of Executive Order 12148;

(b) Delegates authority in accordance with section 201 of Executive Order 10480, as amended, and

(c) Delegates other authorities under the Defense Production Act of 1950, as amended.

[45 FR 44578, July 1, 1980]

§ 322.2 Policies.

(a) Authority of Title I of the Defense Production Act of 1950, as amended, to control the distribution and use of materials and facilities, shall not be used except to require preference in the performance of contracts and orders and to allocate materials and facilities to accomplish the following:

(1) Direct military and atomic energy programs.

(2) Other programs and activities which are related to the military and atomic energy programs and which are certified by the Department of Defense or the Department of Energy and specifically authorized by the Federal Emergency Management Agency.

(3) Deliveries, production, and construction in industry required to fulfill direct military and atomic energy programs and the related programs and activities authorized under paragraph (a)(2) of this section.

(4) The general distribution in the civilian market of materials found to be scarce and critical pursuant to the provisions of section 101(b) of the Defense Production Act of 1950, as amended, and approved by the Director of the Federal Emergency Management Agency under section 201(b) of Executive Order 10480, as amended.

(5) Assistance in providing materials and facilities for the restoration of productive capacity damaged or destroyed by a major disaster as defined and determined under the provisions of Pub. L. 93-288 (42 U.S.C. 5121 *et seq.*).

(i) Whenever the facility to be restored has delivery orders identified by authorized program identification symbols under the defense materials system.

(ii) Whenever failure to restore the facility would result in failure to meet a defense delivery schedule.

(iii) Whenever failure to restore the facility would prevent the provision of a service necessary to meet a defense delivery schedule.

(iv) When and to the extent that assistance is necessary to restore mobilization base capacity for the production of defense items including materials and services covered by the Federal Emergency Management Agency expansion goals whether or not such goals remain open.

(b) The distribution of steel, copper, aluminum and nickel alloys for military and atomic energy and authorized related programs and activities shall assure:

(1) That supplies of these materials are available to those programs and activities on time and in proper quantity.

(2) That demands of these programs and activities shall be distributed among suppliers on a generally fair and equitable basis.

(3) That allotments are not made in excess of actual current requirements of these programs and activities.

These criteria shall also apply to the maximum practicable extent to the use of priorities for materials other than steel, copper, aluminum and nickel alloys in support of direct military and atomic energy programs and other authorized programs and activities.

(c) The Federal Emergency Management Agency shall review requirements and issue program determinations approving programs and making allotments of steel, copper, aluminum and nickel alloys to the Department of Defense and the Department of Energy for direct military and atomic energy programs and related programs and activities that have been authorized and assigned to these agencies for purposes of establishing them as programs eligible for priorities and allocations support, in accordance with the Department of Commerce regulations issued pursuant to Title 1 of the Defense Production Act of 1950, as amended.

(d) All agencies now or hereafter designated by the Director of the Federal Emergency Management Agency to furnish supply and requirements data shall be responsible for the provision of such data and shall be entitled to be heard in connection with the determination of programs by the Director. The evaluation of supply and requirements data and the determination of programs shall be the function of the Associate Director, National Preparedness Programs of the Federal Emergency Management Agency with right of appeal to the Director of the Federal Emergency Management Agency by any designated agency.

(e) Exceptions to the foregoing basic policy may be made in the interests of the national defense by or with the authority of the Director of the Federal Emergency Management Agency.

[45 FR 44578, July 1, 1980, as amended at 47 FR 13150, Mar. 29, 1982]

§ 322.3 Delegation of authority.

(a) The functions of the Director of the Federal Emergency Management Agency under Title 1 of the Defense Production Act of 1950, as amended, are hereby delegated to those offices and agencies named in section 201 of Executive Order 10480, as amended with respect to the areas of responsibilities designated, and subject to the limitations prescribed in that section.

(b) The functions conferred upon the Director of the Federal Emergency Management Agency under Title 1 of the Defense Production Act of 1950, as amended, with respect to priorities and allocations for civil transportation services are hereby delegated to the Secretary of Transportation, subject to the limitations prescribed in this regulation.

(c) The functions conferred upon the Director of the Federal Emergency Management Agency by sections 310(b) and 311(b) of Executive Order 10480, as amended, to certify the essentiality of loans to the Secretary of the Treasury and the Export-Import Bank of Washington are hereby delegated to the Administrator of General Services to the extent that such loans are a part of and in accordance with the terms of programs certified by the Director of the Federal Emergency Management Agency pursuant to section 312 of Executive Order 10480.

(d) The functions conferred upon the Director of the Federal Emergency Management Agency by section 304 of Executive Order 10480, as amended, relative to the encouragement of exploration, development and mining of strategic and critical metals and minerals are hereby delegated to the Secretary of the Interior.

(e) The functions delegated by this order may be redelegated with or without authority for further redelegation, and redelegations on the date hereof shall continue in effect until rescinded or modified by appropriate authority.

(f) Officers and agencies performing the functions delegated by this order or redelegated by, or by authority of, the delegates hereunder shall perform such functions subject to the direction and control of the Director of the Federal Emergency Management Agency as provided by section 101 of Executive Order 10480, as amended. Such officers and agencies shall furnish such reports on the use of the authority as the Director may require.

[45 FR 44578, July 1, 1980, as amended at 45 FR 53479, Aug. 12, 1980]

PART 323—GUIDANCE ON PRIORITY USE OF RESOURCES IN IMMEDIATE POST ATTACK PERIOD (DMO-4)

Sec.

323.1 Purpose.
323.2 General policy.
323.3 Responsibilities.
323.4 Priority activities in immediate postattack period.
323.5 Assignment of resources.
APPENDIX 1 to Part 323—LIST OF ESSENTIAL SURVIVAL ITEMS

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329, E.O. 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 45 FR 44579, July 1, 1980, unless otherwise noted.

§ 323.1 Purpose.

This part:

(a) States the policy of the Federal Government on use of resources in the period immediately following a nuclear attack on the United States;

(b) Provides general guidance for Federal, State, and local government officials on activities to be accorded priority in the use of postattack resources; and

(c) Lists those items essential to national survival in the immediate postattack period.

§ 323.2 General policy.

(a) In an immediate postattack period all decisions regarding the use of resources will be directed to the objective of national survival and recovery. In order to achieve this objective, postattack resources will be assigned to activities concerned with the maintenance and saving of lives, immediate military defense and retaliatory operations, ecconomic activities essential to continued survival and recovery.

(b) This guidance is designed to achieve a degree of national equity in the use of resources and to assign and conserve resources effectively in the immediate postattack period. Until more specific instructions are available, these are the general guidelines within which managerial judgment and common sense must be used to achieve national objectives under widely differing emergency conditions.

§ 323.3 Responsibilities.

(a) As stated in The National Plan for Emergency Preparedness, the direction of resources mobilization is a Federal responsibility. However, in the period immediately following an attack, certain geographical areas may be temporarily isolated, and State and local governments will assume responsibility for the use of resources remaining in such areas until effective Federal authority can be restored. State and local governments will not assume responsibility for resources under the jurisdiction of a Federal agency where the Federal agency is able to function.

(b) As soon as possible after an attack and until specific national direction and guidance on the use of resources is provided, Federal, State, and local officials will determine what resources are available, to what needs they can be applied, how they are to be used, and the extent to which resources are deficient or in excess of survival needs. They will base determinations as to the relative urgency for use of resources primarily upon the importance of specific needs of defense, survival, and recovery.

§ 323.4 Priority activities in immediate postattack period.

The following activities are to be accorded priority over all other claims for resources. There is no significance in the order of the listing—all are important. The order in which and the extent to which they are supported locally may vary with local conditions and circumstances. If local conditions necessitate the establishment of an order of priority among these activities, that order shall be based on determinations of relative urgency among the activities listed, the availability of resources for achieving the actions required, and the feasibility and timeliness of the activities in making the most rapid and effective contribution to national survival.

(a) The immediate defense and retaliatory combat operations of the Armed Forces of the United States and its Allies: This includes support of military personnel and the production and distribution of military and atomic weapons, materials and equipment required to carry out these immediate defense and retaliatory combat operations.

(b) Maintenance or reestablishment of Government authority and control to restore and preserve order and to assure direction of emergency operations essential for the safety and protection of the people. This includes:

(1) Police protection and movement direction;

(2) Fire defense, rescue and debris clearance;

(3) Warnings;

(4) Emergency information and instructions;

(5) Radiological detection, monitoring and decontamination.

(c) Production and distribution of survival items and provision of services essential to continued survival and rapid recovery. (For list of survival items, see Appendix 1 to this part.) These include:

(1) Expedient shelter;

(2) Food, including necessary processing and storage;

(3) Feeding, clothing, lodging, and other welfare services;

(4) Emergency housing and community services;

(5) Emergency health services, including medical care, public health and sanitation;

(6) Water, fuel, and power supply;

(7) Emergency repair and restoration of damaged vital facilities.

(d) Essential communications and transportation services needed to carry out the above activities.

(e) Provision of supplies, equipment, and repair parts to produce and distribute goods needed for the above activities.

§ 323.5 Assignment of resources.

Resources required for essential uses, including manpower, will be assigned to meet the emergency requirements of the priority activities indicated above. The principal objectives are to use available resources to serve essential needs promptly and effectively, and to:

(a) Protect and to prevent waste or dissipation of resources prior to their assignment to priority activities;

(b) Support production of essential goods. Other production will be permitted to continue only from inventories on hand and when there is no emergency requirement for the resources vital to this production.

(c) Support construction for emergency repair and restoration, construction of facilities needed for survival, or the conversion of facilities to survival use, where this can be accomplished quickly. Other construction already under way should be stopped, and no new construction started unless it can be used immediately for essential purposes upon completion.

APPENDIX 1 TO PART 323—LIST OF ESSENTIAL SURVIVAL ITEMS

This document contains a list of items considered essential to sustain life at a productive level to assure national survival in an emergency. The list identifies items to which major attention should be given in all phases of preattack planning to insure the availability of basic essentials for a productive economy in the event of a nuclear attack. Supply-requirements studies and assessments for these items will be made to disclose critical deficiencies or other problems that can be anticipated. Revisions will be made as necessary to keep the items as up-to-date as possible.

The items are arranged by seven major groups:

(1) Health Supplies and Equipment,

(2) Food,

(3) Body Protection and Household Operations,

(4) Electric Power and Fuels,

(5) Sanitation and Water Supply,

(6) Emergency Housing and Construction Materials and Equipment, and

(7) General Use Items.

Survival items are defined as "those items without which large segments of the population would die or have their health so seriously impaired as to render them both burdensome and non-productive." The items have been classified into Group A or Group B, with Group A representing end products consumed or used directly by the population, and Group B consisting of those items essential to the effective production and utilization of the Group A items, which are consumed or used directly by the people.

There are no Group B items in the categories of Health Supplies and Equipment, Body Production and Household Operations, and Emergency Housing and Construction Materials and Equipment. All of these items are considered to be consumed directly and any attempt to separate them in to A and B groupings would be too arbitrary to be meaningful.

It is important to keep in mind the fact that while the items listed are the basic essentials necessary for maintaining a viable economy during the first six months following an attack, not all of them would create problems that would require government action preattack to insure adequate supplies. The aforementioned supply-requirements studies will be undertaken to identify the problem areas. In developing supply data, all available production capacity, existing inventories, and possible substitutions will be considered. For example, in analyzing clothing items, all available supplies would be considered from sport to dress shirts, from overalls to dress suits. However, new production would be limited to the simplest form of the basic item which can be produced. The final determination as to which of the items are most critical and which may require preattack actions by the Government, as well as the type of actions which must be taken, can be made only after a comprehensive supply-requirements analysis is completed.

LIST OF ESSENTIAL SURVIVAL ITEMS

I. *Health Supplies and Equipment:*

GROUP A

1. *Pharmaceuticals:*
Alcohol.
Analgesics, non-narcotic.
Antibiotics and antibacterials.
Antidiabetic agents, oral.
Antihistamines.
Antimalarials.
Atropine.
Blood derivatives.
Carbon dioxide absorbent.
Cardiovascular depressants.
Cardiovascular stimulants.
Corticosteriods.
Diuretics.
General anesthetics.
Hypnotics.
Insulin.
Intravenous solutions for replacement therapy.
Local anesthetics.
Lubricant, surgical.
Morphine and substitutes.
Oral electrolytes.
Oxygen.
Surgical antiseptics.
Sulfa drugs.
Synthetic plasma volume expanders.
Vitamin preparations, pediatric.
Water for injection.

2. *Blood Collecting and Dispensing Supplies:*
Blood collecting and dispensing containers.
Blood donor sets.
Blood grouping and typing sera.
Blood recipient sets.
Blood shipping containers.

3. *Biologicals:*
Diphtheria toxoid.
Diphtheria antitoxin.
Diphtheria and tetanus toxoids and pertussis vaccine.
Gas gangrene antitoxin.
Poliomyelitis vaccine, oral.
Rabies vaccine.
Smallpox vaccine.
Tetanus antitoxin.
Tetanus toxoid, absorbed.
Typhoid vaccine.
Typhus vaccine, epidemic.
Yellow fever vaccine.

4. *Surgical Textiles:*
Adhesive plaster.
Bandage, gauze.
Bandage, muslin.
Bandage, plaster of paris.
Cotton, USP.
Surgical pads.
Stockinette, surgical.
Wadding, cotton sheet.

5. *Emergency Surgical Instruments and Supplies:*
Airway, pharyngeal.
Anesthesia apparatus.
Basin, wash, solution.
Blade, surgical knife.
Brush, scrub, surgical.
Catheter, urethral.
Containers for sterilization.
Chisel, bone.
Drain, Penrose.
Dusting powder.
Forceps, dressing.
Forceps, hemostatic.
Forceps, obstetrical.
Forceps, tissue.
Gloves, surgeon's.
Handles, surgical knife.
Holder, suture needle.
Inhaler, anesthesia, Yankauer (ether mask).
Intravenous injection sets.
Knife, cast cutting.
Lamps, for diagnostic instruments.
Lamps, for surgical lights.
Laryngoscope.
Light, surgical, portable.
Litter.
Mallet, bone surgery.

Needles, hypodermic, reusable.
Needles, suture, eyed.
Otoscope and ophthalmoscope set.
Probe, general operating.
Razor and blades (for surgical preparation).
Retractor, rib.
Retractor set, general operating.
Rongeur, bone.
Saw, amputating.
Saw, bone cutting, wire (Gigli).
Scissors, bandage.
Scissors, general surgical.
Sigmoidoscope.
Speculum, vaginal.
Sphygmomanometer.
Splint, leg, Thomas.
Splint, wire, ladder.
Sterilizer, pressure, portable.
Stethoscope.
Sutures, absorbable.
Sutures, absorbable, with attached needle.
Sutures, nonabsorbable.
Sutures, nonabsorbable, with attached needle.
Syringes, Luer, reusable (hypodermic syringes).
Thermometers, clinical.
Tracheotomy tube.
Tube, nasogastric.
Tubing, rubber or plastic, and connectors.
Vascular prostheses.
Webbing, textile, with buckle.

6. *Laboratory Equipment and Supplies:*

Bacteriological culture media and apparatus.
Balance, laboratory with weights.
Blood and urine analysis instruments, equipment and supplies.
Chemical reagents, stains and apparatus.
Glassware cleaning equipment.
Laboratory glassware.
Microscope and slides.
Water purification apparatus.

GROUP B

None.

II *Food:*

GROUP A

1. *Milk group.* Milk in all forms, milk products. Important for calcium, riboflavin, protein, and other nutrients.

2. *Meat and meat alternate group.* Meat, poultry, fish, eggs; also dry beans, peas, nuts. Important for protein, iron, and B-vitamins.

3. *Vegetable-fruit group.* Including 1. Dark Green and yellow vegetables. Important for Vitamin A. 2. Citrus fruit or other fruit or vegetables. Important for Vitamin C. 3. Other fruits and vegetables, including potatoes.

4. *Grain products.* Especially enriched, restored, cereal and cereal products, and bread, flours, and meals. Important for energy, protein, iron, and B-vitamins.

5. *Fats and oils.* Including butter, margarine, lard, and other shortening oils. Important for palatability and food energy; some for Vitamin A and essential fatty acids.

6. *Sugars and syrups.* Important for palatability and food energy.

7. *Food adjuncts.* Certain food adjuncts should be provided to make effective use of available foods. These include antioxidants and other food preservatives, yeast, baking powder, salt, soda, seasonings and other condiments. In addition, coffee, tea, and cocoa are important for morale support.

GROUP B

Food containers.
Nitrogenous fertilizers.
Seed and livestock feed.
Salt for livestock.

Veterinary Medical Items:

Anthrax vaccine.
Black leg vaccine.
Hog cholera vaccine.
Newcastle vaccine.

III. *Body Protection and Household Operations:*

GROUP A

1. *Clothing:*

Gloves and mittens.
Headwear.
Hosiery.
Outerwear.
Shoes and other footwear.
Underwear.
Waterproof outer garments.

2. *Personal Hygiene Items:*

Diapers, all types.
Disposable tissues.
First aid items (included on Health Supplies and Equipment List).
Nipples.
Nursing bottles, all types.
Pins.
Sanitary napkins.
Soaps, detergents, and disinfectants.
Toilet tissue.

3. *Household Equipment:*

Bedding.
Canned heat.
Cots.
Hand sewing equipment.
Heating and cooking stoves.
Incandescent hand portable lighting equipment (including flashlights, lamps, batteries).
Kitchen, cooking, and eating utensils.
Lamps (incandescent medium base) and lamp holders.
Matches.
Nonelectric lighting equipment.
Sleeping bags.

Group B

None.

IV. *Electric Power and Fuels:*
1. *Electric Power.*

Group A

Electricity.

Group B

Conductors (copper and/or aluminum), including bare cable for high voltage lines and insulated wire or cable for lower voltage distribution circuits.

Switches and circuit breakers.
Insulators.
Pole line hardware.
Poles and crossarms.

Transformers (distribution, transmission, and mobile).

Tools for live-circuit operations, including rubber protective equipment, and linemen's tools.

Utility repair trucks, fully equipped.

Prime mover generator sets up to 501 kilowatts and 2400 volts, including portable and mobile sets up to 150 kilowatts and 110/220/440 volts, 3-phase, 60-cycle complete with fuel tank and switchgear in self-contained units.

2. *Petroleum Products.*

Group A

Gasoline.
Kerosene.
Distillate fuel oil.
Residual fuel oil.
Liquefied petroleum oil.
Lubricating oil.
Grease.

Group B

Storage tanks.
Pumps for loading and unloading.

Pressure containers and fittings for liquefied petroleum gas.

3. *Gas.*

Group A

Natural gas.
Manufactured gas.

Group B

Various sizes of pipe (mostly steel).

Various sizes of valves, fittings, and pressure regulators.

Specialized repair trucks and equipment.

4. *Solid Fuels.*

Group A

Coal and coke.

Group B

Conveyor belting.
Insulated trail cables.
Trolley feeder wire.
Roof bolts.

V. *Sanitation and Water Supply:*

Group A

1. *Water.*
2. *Water Supply Materials:*
a. *Coagulation:*
Ferric chloride.
Ferrous sulfate.
Ferric sulfate.
Chlorinated copperas.
Filter alum.
Hydrated lime.
Pulverized limestone.
Soda ash.
b. *Disinfection Chemicals:*

High-test hypochlorites (70 percent) in drums, cans, ampules.

Iodine tablets.
Liquid chlorine, including containers.
Chlorine compounds (not gas).
c. *Miscellaneous Materials:*
Diatomaceous earth.
Activated carbon.

3. *Chemical Biological, and Radiological (CBR) Detection, Protection, and Decontamination Items:*

Calibrators.

Chemical agent detection kits, air, food, and water.

Dosimeters and chargers.
Protective masks, clothing, helmets.
Survey meters (Alpha, Beta, Gamma).

Warning signs—biological, chemical, and radiological contamination.

4. *Insect and Rodent Control Items:*
a. *Insecticides:*

DDT, water dispersible powder (75 percent).

Lindane powder, dusting (1 percent).

Malathion, liquid, emulsifiable concentrate (57 percent).

Deet (diethyltoluamide) 75 percent in denatured alcohol.

Pyrethrum.
b. *Rodenticides:*
Anticoagulant type, ready-mixed bait.

"1080" (sodium monofluoroacetate) (for controlled use only).

5. *General Sanitation:*
Lye.

Group B

1. *General Supplies and Equipment:*
Chemical feeders.
Mobile and portable pressure filters.
Chlorinators (gas and hypochlorites).

Pumps and appurtenances, Hand—Electric—Gasoline—Diesel.

Well-drilling equipment, including well casing, drive pipe and drive points.

2. *Storage and Transport Equipment:*
Lyster bags.
Storage tanks, collapsible and portable.

Storage tanks, rigid, transportable.

Storage tanks, wood stave, knock-down.

3. *Laboratory Equipment and Supplies:*

Membrane filter kits with filters and media.

Chlorine and pH determination equipment.

4. *Sanitation Equipment:*

Hand sprayer, continuous type.

Hand sprayer, compression type.

Hand duster, plunger type.

Spraying equipment for use with helicopter, fixed-wing light aircraft, high-speed fixed-wing attack aircraft, and cargo-type aircraft.

VI. *Emergency Housing and Construction Materials and Equipment.*

GROUP A

Asphalt and tar roofing and siding products.

Builders hardware—hinges, locks, handles, etc.

Building board, including insulating board, laminated fiberboard, hardpressed fiberboard, gypsum board, and asbestos cement (flat sheets and wallboard).

Building papers.

Plastic patching, couplings, clamps, etc. for emergency repairs.

Plumbing fixtures and fittings.

Prefabricated emergency housing.

Rough hardware—nails, bolts, screws, etc.

Sewer pipe and fittings.

Tents and tarpaulins; canvas, plastics, and other similar materials.

Lumber and allied products; Lumber, principally 1-inch and 2-inch, minor quantities of small and large timbers; siding and flooring; plywood; millwork, doors, and windows.

Masonry products—brick, cement, lime, concrete block, hollow tile, etc.

Translucent window coverings.

Water pipe and hose, plus fittings—all types including fire hose.

GROUP B

None.

VII. *General Use Items.*

GROUP A

None.

GROUP B

Batteries, wet and dry cell.

Bulldozers.

Fire fighting equipment.

Light equipment and hand tools (including electric powered) for carpentry, masonry, plumbing, and excavation.

Pipe installation materials and equipment.

Refrigerators, mechanical.

Rigging tools—cables, ropes, tackles, hoists, etc.

Tank railroad cars.

Tank Trucks and trailers.

Tires.

Trenching equipment.

Truck tractors and trailers, including low bed.

Trucks up to five tons (25 percent equipped with power takeoff).

Welding equipment and supplies (electric and acetylene).

PART 324—NATIONAL SECURITY POLICY GOVERNING SCIENTIFIC AND ENGINEERING MANPOWER (DMO-5)

Sec.

324.1 Purpose.
324.2 Background.
324.3 Policy.
324.4 Action.

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329, E.O. 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 45 FR 44582, July 1, 1980, unless otherwise noted.

§ 324.1 Purpose.

This part provides current policy on the training and utilization of scientific and engineering manpower as it affects the national security.

§ 324.2 Background.

(a) The essential role of scientific and engineering manpower in any period of national emergency is well recognized. While the quantity and quality of scientific and engineering manpower are materially influenced by Government action, the development and use of such manpower are greatly dependent upon policies and actions of the private sector.

(b) Since the issuance of Defense Manpower Policy 8, many steps have been taken by the Government and the private sector to assure the adequacy of scientific and engineering manpower for total national security. This statement of current Government policy is intended to continue the constructive policies and actions already in being and to assure the adequacy of this important national resource during a major emergency.

§ 324.3 Policy.

It is the policy of the Federal Government to project the Nation's scientific and engineering manpower requirements sufficiently into the future to permit long-range planning; to relate those requirements to other resource requirements, including requirements for other manpower skills; to relate peacetime and emergency requirements; and to cooperate with educators, industry, professional societies, and employee associations to:

(a) Support training and education programs which enhance our national security through the development of defense related skills.

(b) Stimulate individuals with scientific and technical aptitudes to attain the highest level of formal education in science and technology for which they are capable.

(c) Stress basic principles and fundamentals of science and technology in educational curricula.

(d) Offer significant on-the-job training which will broaden the experience and capabilities of individual scientists and engineers.

(e) Provide realistic retraining opportunities which will assist in updating the knowledge and skills of scientists and engineers.

(f) Broaden the selection base in order to assure entry of all qualified individuals, including women and members of minority groups, into scientific and technical positions.

(g) Encourage continued employment of senior scientists and engineers who are yet capable of efficient performance, even though the retention of such personnel may be only on a part-time basis.

(h) For maximum security explore and, where appropriate, adopt the principle of decentralized scientific and technical operations.

§ 324.4 Action.

Consistent with the policies contained herein, each department and agency of the Federal Government should (a) review its current manpower policies and update its policies and programs for scientific and engineering manpower to assure their maximum contribution to national security and emergency preparedness, (b) base its policies and actions on projected peacetime and emergency requirements, and (c) encourage and support private sector efforts to assure the fulfillment of future requirements for this critical manpower resource.

PART 325—EMERGENCY HEALTH AND MEDICAL OCCUPATIONS

Sec.

325.1 Purpose.
325.2 Scope and applicability.
325.3 Policy.

AUTHORITY: 50 U.S.C. 2061; E.O. 11490; E.O. 12148.

SOURCE: 45 FR 8601, Feb. 8, 1980, unless otherwise noted. Redesignated at 45 FR 8601, July 1, 1980.

§ 325.1 Purpose.

The Director, Federal Emergency Management Agency, after agreement with the Secretary of Labor and the Secretary of Health, Education, and Welfare, issues this List of Emergency Health and Medical Occupations in support of Part 11, Executive Order 11490, as amended. This List provides guidance to all officials concerned with planning for the emergency training and emergency assignment of health and medical personnel engaged in the listed occupations.

§ 325.2 Scope and applicability.

The list of Emergency Health and Medical Occupations identifies those occupations which would be needed to provide public health and medical services during and immediately after an emergency in which survival of the population is the primary consideration.

§ 325.3 Policy.

(a) *Training for emergency.* Sections 1101; 1103(1); 1104(2); and 1325(4) of Executive Order 11490 specify emergency training responsibilities of the Secretary of Health and Human Services. Depending on the availability of resources, the Secretary of Health and Human Services, in cooperation with other Federal departments/agencies, State and local governments, and appropriate private sector organizations, shall:

(1) Define the emergency roles which would be performed by those filling the occupations included on the List of Emergency Health and Medical Occupations;

(2) Develop and implement appropriate emergency training programs designed to prepare individuals in these occupations to perform effectively their specialized roles in a national emergency as distinguished from their peacetime functions; and

(3) Set quantitative and qualitative training objectives for each occupational category and develop arrangements for payment for the training.

(b) *Allocation of the health and medical workforce in emergencies.* During a declared national emergency, in which survival of the population is the preeminent consideration, the provision of health and medical services would be a priority emergency response and recovery function. To ensure that this priority need is met, officials responsible for the allocation of the workforce in emergency will use the List of Emergency Health and Medical Occupations as an aid in the mobilization of available health and medical personnel and the staffing of emergency health and medical services. Emergency situations may dictate the need to redistribute, on a temporary basis, health and medical personnel in order to provide for equitable and needed coverage of the emergency caseload. Although Federal, State, and local health officials are expected to have the requisite authority to take such actions in a declared national emergency, it is probable that the traditional role of volunteerism in the health and medical field will prevail and minimize the need for involuntary controls. Jurisdiction over health and medical personnel in actual emergencies would remain with their employers and the integrity of institutional services will be preserved wherever possible, except as noted above.

(c) *Use of health and medical personnel in other priority emergency activities.* While health and medical services will be an immediate priority need in most declared national emergencies, as the situation unfolds, different priority needs will evolve, placing unusual demand on scarce workforce resources. As emergency health hazards and medical care loads are brought under control, it may be possible to release certain health and medical personnel who fill positions in the occupational categories listed on the List of Emergency Health and Medical Occupations for augmentation of other essential work groups on a temporary basis. Where possible, such reassignments should be accomplished on a consultative, voluntary basis.

(d) *Ancillary and support personnel.* Vital to the effective performance of the emergency health and medical team are individuals in direct support occupations such as hospital, sanitation, and laboratory helpers, as well as engineering, clerical, food service, and custodial personnel. Personnel in these ancillary and support categories will remain on their jobs during and after a declared national emergency until health hazards and medical care loads are brought under control. Reassignment of these personnel will follow the policy cited in paragraph (c) of this section.

(e) *List of emergency health manpower occupations.*[1]

Occupational title	Code number[2]
Administrator, Hospital	167.117
Admitting Officer (Medical Service)	205.137
Ambulance Attendant (Medical Service)	355.374
Ambulance Driver (Medical Service)	913.683
Audiologist	076.101
Audiometrist	078.362
Bacteriologist	041.061
Bacteriologist, Dairy	041.061
Bacteriologist, Fishery	041.061
Bacteriologist, Food	041.061
Bacteriologist, Medical	041.061
Bacteriologist, Pharmaceutical	041.061
Biochemist	041.061
Birth Attendant	354.377
Chemist, Clinical	041.061
Chemist, Pharmaceutical	041.061
Dentist	072
Dental Assistant (Medical Service)	079.371
Dental Hygienist	078.361
Dietitian, Clinical (Prof. & Kindred)	077.127
Emergency Medical Services Coordinator	079.117
Entomologist (Prof. & Kindred)	041.061
Food and Drug Inspector (Government Services)	168.267

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[1] Includes students, trainees, and interns whose training or education leading to any of the indicated skills is sufficiently advanced to qualify them to contribute to the technical tasks of providing health services.

Occupational title	Code number[3]
Health Officer, Field	168.167
Health Physicist	079.021
Helminthologist	041.061
Histopathologist	041.061
Hygienist, Industrial	079.161
Industrial Health Engineer	012.167
Laboratory Assistant, Blood and Plasma	078.687
Medical Apparatus Model Maker	712.261
Medical Assistant	079.367
Medical Laboratory Assistant	078.381
Medical Record Administrator	079.169
Nurse Aide	355.674
Nurse, Practical	354.374
Nurse, Licensed Practical	079.374
Nurse, Registered	075
Optician, Dispensing	713.361
Optician	716.280
Optometrist	079.101
Orderly (Medical Service)	355.674
Orthopedic Assistant	712.661
Orthoptist (Medical Service)	079.371
Orthotist	078.261
Osteopathic Physician	071.101
Parasitologist	041.061
Pathologist	070.061
Pharmacist	074
Pharmacologist	041.061
Physicians and Surgeons	070
Physician Assistant	079.364
Podiatrist	079.101
Prosthetist	078.261
Protozoologist	041.061
Psychiatric Aide	355.377
Psychologist, Clinical	045.107
Public Health Educator (Prof. & Kindred)	079.117
Public Health Microbiologist	041.261
Radiation Monitor	199.167
Sanitarian	079.117
Sanitary Engineer	005.061
Social Worker, Medical	195.107
Social Worker, Psychiatric	195.107
Superintendent, Hospital	187.117
Supervisor, Dental Laboratory	712.131
Technicians:	
Audiometric Technican	078.362
Biomedical Equipment Technician (inst. and app.; medical service)	719.261
Biomedical Equipment Technician (Prof. & Kindred)	019.261
Blood-Bank Technician	078.381
Cytotechnician	078.381
Dental-Laboratory Technician	712.381
Dental Technician	712.381
Dialysis Technician	078.362
Electrocardiograph Technician	078.362
Electroencephalographic Technician	078.362
Emergency Medical Technician	079.374
Hematology Technician	078.381
Laboratory Technician, Veterinary	073.361
Medical Technician	078.381
Medical Laboratory Technician	078.381
Orthodontic Technician	712.381
Orthotics-Prosthetics Technician	712.381
Sereology Technician	078.381
Surgical Technician	079.374
Tissue Technician	078.381
X-ray Technician	199.361
Technologists:	
Biochemistry Technologist	078.261
Blood-Bank Technologist	078.361
Cytotechnologist	078.261
Hematology Technologist	078.361
Histopathology Technologist	078.261
Medical Technologist	078.261
Microbiology Technologist	078.261
Nuclear Medical Technologist	078.361
Radiologic Technologist	078.362
Serology Technologist	078.261
Tissue Technologist	078.361
X-ray Technologist	078.362
Therapists:	
Inhalation Therapist	076.361
Occupational Therapist	076.121
Orientation Therapist for Blind	076.221
Physical Therapist	076.121
Respiratory Therapist	076.361
Veterinarians[3]	073
Virologist	041.061

[3] Dictionary of Occupational Titles/Department of Labor/ Fourth Edition.

[3] Though current planning provides that many veterinarians be utilized in casualty care and preventive medicine activities immediately after an emergency, veterinarians will continue to be needed to perform services of a strictly veterinary nature after most of the human casualties have been cared for temporarily. Such veterinary activities will include protection of food, animals against diseases and the effects of atomic, biological, and chemical warfare; meat and poultry inspection and supplementing food inspection forces in certain food processing plants, and food storage facilities.

[45 FR 8601, Feb. 8, 1980. Redesignated at 45 FR 8601, July 1, 1980 and amended at 51 FR 34606, Sept. 30, 1986]

PART 326—POLICY GUIDANCE FOR A NATIONAL EMERGENCY BLOOD PROGRAM (DMO-7)

Sec.
326.1 Purpose.
326.2 Background.
326.3 Objectives.
326.4 Policy.
326.5 Responsibilities.
326.6 Interagency research relationships.
326.7 Reporting.

AUTHORITY: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329, E.O. 12148 of July 20, 1979, 44 FR 43239.

SOURCE: 45 FR 44582, July 1, 1980, unless otherwise noted.

§ 326.1 Purpose.

This order prescribes the objectives, policies, and responsibilities of the National Emergency Blood Program.

§ 326.2 Background.

Provision of adequate blood and related items and activities to meet basic military, civil defense and civilian needs in an emergency is of recognized national importance. Certain government agencies and civilian blood banking systems have developed programs designed to contribute to this end. Coordination of these programs is essential to achieve maximum effectiveness and to avoid duplication of efforts and conflict of activities.

§ 326.3 Objectives.

The National Emergency Blood Program is established to develop, prior to a national emergency, the capability and readiness to make optimum use of available resources to meet the Nation's requirements for blood and related products in any such emergency. Actions directed toward this objective include planning and organization for emergency operations, standardization, and stockpiling of supplies and equipment, training of personnel in blood program techniques, and development of donor appeal measures.

§ 326.4 Policy.

(a) *Coordination.* No Federal agency shall duplicate the efforts of any other agency participating in this program except in situations where it is clearly recognized that the task in question cannot be otherwise adequately performed. Further, any such duplicating effort shall not be undertaken without prior agreement among the Federal agencies involved and the Federal Emergency Management Agency. All other agencies participating in the program are urged to coordinate their efforts with all other participants so as to avoid unnecessary duplication.

(b) *Blood collection activities.* (1) The blood collection activities of Federal agencies shall be administered so as to make maximum, efficient use of available sources while assuring minimum impact on provision of normal blood supplies for the civilian community.

(2) The collection facilities of the Department of Defense shall be limited to Armed Services installations and blood shall be drawn only from military personnel or from civilian personnel on military installations.

(c) *Reserves.* (1) Reserves of blood products, artificial plasma volume expanders and related items shall be established and maintained by the Department of Defense and by the Department of Health and Human Services.

(2) Blood derivative reserves for the National Emergency Blood Program shall be established by contracting with the civilian suppliers for the collection of blood for this purpose, except that the Department of Defense may utilize blood salvaged from its blood collection program for the purpose of adding to the Department of Defense blood derivative reserve.

(3) Blood or blood derivatives going into the reserves shall be allocated according to military and nonmilitary defense requirements to the Department of Defense and the Department of Health and Human Services by the Director, Federal Emergency Management Agency.

(4) In the event of a national emergency, the total reserves of blood products, artificial plasma volume expanders and related items shall be subject to immediate reallocation by Executive order.

(d) *Emergency allocation of blood and blood derivatives.* The Director, Federal Emergency Management Agency, may, in an emergency, allocate blood collected by organizations actively participating in this Program. With modifications dependent on the magnitude and type of emergency, the following priorities will be applied:

(1) First priority shall be given to the allocation of blood to the Armed Services for whole blood transfusion purposes.

(2) Second priority shall be given to the allocation of whole blood and blood derivatives for civilian needs.

(e) *Recruitment of volunteer blood donors.* When directed by the Federal Emergency Management Agency, the total donor recruitment program shall be geared to soliciting donors for the Blood Program as a whole rather than for specific parts of the whole. The various agencies involved in this program shall unite in a coordinated effort to inform the people clearly of the urgent need for blood. The Federal Emergency Management Agency shall designate the agency to administer this effort.

§ 326.5 Responsibilities.

(a) The Federal Emergency Management Agency will exercise authoritative coordination of the program. It will develop and promulgate overall policy guidance and will adjudicate conflicts between participating Federal agencies.

(b) The Department of Defense is responsible for administering the military aspects of this program.

(c) The Department of Health and Human Services is responsible for the nonmilitary aspects of this program as part of its assignment of responsibility for planning the mobilization of the nation's civilian health resources.

(d) The Secretary of Defense shall maintain an interagency committee to coordinate Federal agency funding and programing aspects for research and development projects relating to the National Emergency Blood Program so as to best support that program. However, this mission should not be construed as control or direction of the research of any agency represented on this committee.

(e) The National Research Council shall:

(1) Formulate, evaluate, and recommend programs and projects relating primarily to scientific aspects of the National Emergency Blood Program.

(2) Recommend actions which may be taken by the various agencies involved in the operation of the National Emergency Blood Program based on relevant research determinations.

§ 326.6 Interagency research relationships.

(a) Funds shall be provided for the work of the National Research Council in connection with the National Emergency Blood Program by participating agencies in accordance with established practices.

(b) Interested Federal agencies, such as the Federal Emergency Management Agency, Department of Defense, Public Health Service, and the Food and Drug Administration, shall seek the advice of the National Research Council on problems relating primarily to the scientific aspects of Research and Development for the National Emergency Blood Program.

(c) The National Research Council, the Department of Defense interagency committee, and the Federal Emergency Management Agency shall keep each other informed of program developments.

§ 326.7 Reporting.

(a) Reports of the activities of the Council and the committee shall be submitted when and as requested by the Federal Emergency Management Agency.

(b) As and when directed by the Federal Emergency Management Agency, the Department of Health and Human Services, and the Department of Defense, shall provide the Federal Emergency Management Agency with reports covering (1) the respective requirements and reserves of blood program items; and (2) related activities.

PART 327—POLICY ON USE OF GOVERNMENT-OWNED INDUSTRIAL PLANT EQUIPMENT BY PRIVATE INDUSTRY (DMO-10A)

Sec.
327.1 Purpose.
327.2 Scope and applicability.
327.3 Policy.
327.4 Disputes.
327.5 Reports.

Authority: National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239.

Source: 45 FR 44583, July 1, 1980, unless otherwise noted.

§ 327.1 Purpose.

This part establishes policy on the use by private industry of Government-owned industrial plant equipment. This policy is necessary to maintain a highly effective and immediately available reserve of such equipment for the emergency preparedness programs of the U.S. Government.

§ 327.2 Scope and applicability.

(a) This part applies to all Federal departments and agencies having, for purposes of mobilization readiness, Government-owned industrial plant equipment under their jurisdiction or control and having emergency preparedness functions assigned by Execative orders concerning use of that equipment.

(b) As used herein, "industrial plant equipment" means those items of equipment, each with an acquisition cost of $1,000 or more, that fall within specified classes of equipment listed in DOD regulations. Classes of equipment may from time to time be added to or deleted from this list.

§ 327.3 Policy.

(a) *General.* (1) Primary reliance for defense production shall be placed upon private industry.

(2) When it is determined by an agency that, because of the lack of specific industrial plant equipment, private industry of the United States cannot be relied upon for needed Government production, that agency may provide to private industry such Government-owned industrial plant equipment as is deemed necessary to ensure required production capability. Requirements for such equipment should be reviewed at least annually to ascertain the continuing need, particularly with a view toward private industry furnishing the equipment for long term requirements.

(3) When it is necessary for Federal agencies to supply Government-owned industrial plant equipment to private industry, these agencies will maintain uniformity and fairness in the arrangements for the use of this equipment by following regulations for the use of such equipment as developed and published by the Secretary of Defense pursuant to section 809 of Pub. L. 93-155. The regulations to be developed by the Secretary of Defense shall be in consonance with this order. These regulations will attempt to ensure that no Government contractor is afforded an advantage over his competitors and that Government-owned industrial plant equipment is maintained properly and kept immediately available for the emergency preparedness needs of the United States.

(b) *Interagency use of idle equipment.* In any instances in which a Government contractor cannot meet Government production schedules because necessary industrial plant equipment is not available from private industry or from the contracting Federal department or agency, idle industrial plant equipment under the control of other Federal agencies may be made available for this purpose through existing authorities on a transfer, loan, or replacement basis by interagency agreement.

(c) *Availability of equipment for emergency use.* Government-owned industrial plant equipment may be provided by controlling agencies for emergency use by essential Government contractors whose facilities have been damaged or destroyed.

(d) *Uniform rental rates.* All new agreements entered into by any agency of the Federal Government under which private business establishments are provided with Government-owned industrial plant equipment shall be subject to rental rates established by the Secretary of Defense pursuant to section 809 of Pub. L. 93-155. The rental rates shall ensure a fair and equitable return to the U.S. Government and be generally competitive with commercial rates for like equipment.

(e) *Use of Government-owned industrial plant equipment for commercial (non-Government) purposes.* Subject to adequate controls being established under DOD regulations pursuant to Pub. L. 93-155, and statutory authority for leasing, Government-owned industrial plant equipment may be authorized for commercial use by contractors performing contracts or subcontracts for the Government agency if it is necessary to keep the equipment in a high state of operational readiness through regular usage to support the emergency preparedness programs of the U.S. Government.

§ 327.4 Disputes.

In the event of an interagency dispute about the regulations developed by the Department of Defense in accordance with this order, the Director, Federal Emergency Management Agency, shall adjudicate.

§ 327.5 Reports.

Such reports of operations under this order as may be required by the Federal Emergency Management

Agency, shall be submitted to the Director.

PART 328—GENERAL POLICIES FOR STRATEGIC AND CRITICAL MATERIALS STOCKPILING (DMO-11)

Sec.
328.1 Purpose.
328.2 Policies.
328.3 Delegation of authority—Preparation of reports.

AUTHORITY: Strategic and Critical Materials Stock Piling Act, as amended, 50 U.S.C. 98; National Security Act of 1947, as amended, 50 U.S.C. 404; Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239; E.O. 12155 of September 10, 1979, 44 FR 53071.

SOURCE: 45 FR 44584, July 1, 1980, unless otherwise noted.

§ 328.1 Purpose.

This part sets forth revised policies for the administration of strategic and critical materials stockpiling.

§ 328.2 Policies.

By virtue of the authority vested in me by Executive Order 11051, the following policies are promulgated to govern the administration of strategic and critical materials stockpiling:

(a) *General.* The strategic stockpile shall be so administered as to assure the availability of strategic and critical materials in times of national emergency.

(b) *Period covered by stockpiling.* All strategic stockpile goals for conventional war shall be limited to meeting estimated shortages of materials for the first three years of a war.

(c) *Stockpile objectives.* Strategic stockpile goals shall be adequate for supplies of these materials in time of national emergency.

(d) *Emergency requirements.* The requirements estimates for use in times of national emergency, where appropriate, reflect specific requirements to the extent available. It shall be assumed that the total requirements will approximate the capacity of industry to consume, taking into account necessary wartime limitation, conservation and substitution measures. Departments and agencies having responsibilities with regard to requirements data on stockpile materials shall review such data and provide, upon his request, the Director of the Federal Emergency Management Agency with information as to all significant changes.

(e) *Emergency supplies.* Estimates of supply for the mobilization period shall be based on readily available capacity and known resources in the United States and such other countries as directed by the National Security Council. Departments and agencies having the responsibilities with regard to supply data on stockpile materials shall review such data and provide the Director of the Federal Emergency Management Agency upon his request, with information as to all significant changes.

(f) *Provision for special-property materials.* Arrangements shall be made for the regular availability of objective scientific advice to assist in the evaluation of prospective needs for high-temperature and other special property materials. Such materials shall be stockpiled if reasonably firm minimum requirements indicate the existence of a supply deficit in the event of an emergency.

(g) *Supply-requirements reviews.* The supply-requirements balance for any material that is now or may become important to defense shall be kept under continuing surveillance. Supply-requirements data submitted pursuant to paragraphs (d) and (e) of this section shall be examined upon receipt. A full-scale review may be undertaken at any time that a change is believed to be taken place that would have a significant bearing on the wartime readiness position. Priority of review shall be given to materials under procurement.

(h) *Procurement policy.* Unfilled objectives shall be attained expeditiously by cash procurement or otherwise as the Director shall deem appropriate. Long-term contracts shall contain termination clauses whenever possible. All feasible measures for meeting materials deficits in an emergency shall be considered. Stockpiling shall be undertaken only when it is clear that it is the best solution.

(i) *Maintenance of the mobilization base.* A portion of the mobilization base comprises existing or projected productive capacity the output of which will be relied on to fill defense requirements. All inventories of Government-owned materials held for long-term storage are a part of the mobilization base and should be weighed in determining the need for a relevant portion of the productive segment of the mobilization base. The maintenance of any portion of the productive segment of the mobilization base through stockpile procurement shall be undertaken only within unfilled stockpile objectives.

(j) *Upgrading to ready usability.* In order to satisfy the initial surge of abnormal demands following intensive mobilization in a period of national emergency, stockpile objectives of upgraded forms of such materials shall be established for immediate use in such circumstances. For this purpose a minimum readiness inventory shall be provided near centers of consumption. Materials in Government inventories may be upgraded for such stockpiling purposes only when the net cost of such processing including transportation and handling is less than the cost of new material. Materials should be upgraded to forms which will permit the greatest use-flexibility. Surplus materials may be used to pay for the upgrading of the same or other materials required to meet objectives providing that the use of excess materials for this purpose is in conformance with disposal criteria.

(k) *Beneficiation of subspecification materials.* Subspecification-grade materials in Government inventories may be beneficiated within the limits of the objectives when this can be accomplished at less cost than buying new material.

(l) *Cancellation of commitments.* Commitments for deliveries to national stockpile and Defense Production Act inventories beyond the objectives shall be canceled or reduced when settlements can be arranged which would be mutually satisfactory to the supplier and the Government and which would not be disruptive to the economy or to projects essential to the national security. Such settlements may take into account anticipated profits and cover adjustments for above-market premiums. The settlement of commitments may be made through the payment of cash or through the use of surplus materials. Responsibility with respect to the settlement of commitments in the light of overall interest of the Government rests with the Administrator of General Services who shall keep other agencies advised and consult with them to the extent appropriate.

(m) *Retention of other inventories.* Within the limits of unfilled stockpile objectives, stockpile-grade materials in the Defense Production Act and the supplemental stockpile inventories shall be retained for national stockpile purposes.

(n) *Disposals:* (1) The Director of the Federal Emergency Management Agency will authorize the disposal of excess materials only after due regard to: (i) Avoidance of serious disruption of the usual markets of producers, processors and consumers, and (ii) the protection of the United States against avoidable loss.

(2) In general, excess materials constitute unneeded assets and shall be disposed of as expeditiously as possible.

(3) In making such disposals preference shall be given to materials that deteriorate, that are likely to become obsolete, that do not meet quality standards, or that do not have stockpile objectives.

(4) The Administrator of General Services shall be responsible for disposal of excess materials. He shall advise the Secretary of State and the appropriate Assistant to the President in advance on all disposal plans.

(o) *Government use.* Under such policies and procedures as the Administrator of General Services may prescribe, Government agencies which directly or indirectly use strategic and critical materials shall fulfill their requirements through the use of materials in Government inventories that are excess to the needs thereof. Direct use means use in a Government-owned and operated facility and use in a Government-owned facility which is operated by a contractor for the Government. Indirect Government use means use by prime contractors and all tiers ofsubcontractors in the production of items being procured by the Government.

§ 328.3 Delegation of authority—Preparation of reports.

The Administrator of General Services shall prepare on behalf of the Director of the Federal Emergency Management Agency and forward to him for transmittal to the Congress reports as required by the Director.

PART 329—USE OF PRIORITIES AND ALLOCATION AUTHORITY FOR FEDERAL SUPPLY CLASSIFICATION (FSC) COMMON USE ITEMS (DMO-12)

Sec.

329.1 Purpose.
329.2 Policies.
329.3 Procedures.
329.4 Implementation.

Authority: Defense Production Act of 1950, as amended, 50 U.S.C. App. 2061 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239; E.O. 10480 of August 14, 1953, (18 FR 4939) as amended.

Source: 45 FR 44585, July 1, 1980, unless otherwise noted.

§ 329.1 Purpose.

This part provides policy guidance concerning the use of priorities and allocation authority under Title I of the Defense Production Act of 1950, as amended, for the procurement of common use items in the Federal Supply Classification (FSC).

§ 329.2 Policies.

The following guidance is provided pursuant to the Defense Production Act of 1950, as amended; section 201 of Executive Order 10480, and § 322.2 of this chapter (DMO-3).

(a) Priority ratings under Title I of the Defense Production Act of 1950, as amended, are not authorized for certain FSC Groups, Classes, and Items:

(1) Which are of the types commonly available in commercial markets for general consumption,

(2) Which do not require major modification when purchased for military or other ratable government use, and

(3) Which are in sufficient supply as to cause no hindrance to the accomplishment of military or other national defense objectives.

Such Groups, Classes, and Items will be as specified from time to time by the Department of Commerce with the approval of the Federal Emergency Management Agency. Procurement in these Groups, Classes, and Items is to be made without priority assistance, including single service procurement that may include defense and defense-supporting needs. In the event procurement difficulties are encountered which threaten timely delivery, application for special assistance may be made for those categories of supply authorized special assistance in existing lists, and must be accompanied by full justification to support the need for such assistance.

(b) Priority ratings may be used for the procurement of other authorized FSC Groups, Classes, and Items only in quantities required to meet the needs of approved programs of ratable agencies. The quantities of current procurement of each Group, Class, and Item shall be based on and shall not exceed the ratio of rated purchases to total purchases for that Group, Class, and Item that was consummated in the 6-month period preceding the first day of January and July in each year. Any other periodic cycle considered suitable and agreed to by the Domestic and International Business Administration, Department of Commerce, and the procuring agency may be substituted.

(c) In the interest of minimizing administrative costs, where rated procurement under paragraph (b)(2) of this section, constitutes 97 percent or more of the total procurement of a Group, Class, or Item, all of the Group, Class, or Item may be bought on ratings.

§ 329.3 Procedures.

Requests for additional authorizations of Classes, Groups, or Items should be presented to General Services Administration (AP), Washington, DC, 20405, accompanied by a statement of justification indicating why the Class, Group, or Item should be regarded as necessary or appropriate to promote the national defense and why defense-related requirements cannot be met without the use of priorities.

§ 329.4 Implementation.

Departments and agencies involved with this program shall issue implementing instructions and directives no later than 30 work days from the effective date of this order. Copies of such instructions, directives, and related documents shall be furnished to the General Services Administration (AP) on a routine basis as issued.

PART 330—POLICY GUIDANCE AND DELEGATION OF AUTHORITIES FOR USE OF PRIORITIES AND ALLOCATIONS TO MAXIMIZE DOMESTIC ENERGY SUPPLIES IN ACCORDANCE WITH SUBSECTION 101(c) OF THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED (DMO-13)

Sec.
330.1 Purpose.
330.2 Policies.
330.3 Delegation of authority.

Authority: Defense Production Act of 1950, as amended, including amendment to sec. 101(c) by sec. 104 of the Energy Policy and Conservation Act (Pub. L. 94-163) 50 U.S.C. App. 2061 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR 1978 Comp. p. 329; E.O. 12148 of July 20, 1979, 44 FR 43239; E.O. 11912 of April 13, 1976.

Source: 45 FR 44586, July 1, 1980, unless otherwise noted.

§ 330.1 Purpose.

This part:

(a) Establishes policy guidance on determination and use of priorities and allocations for materials and equipment to maximize domestic energy supplies pursuant to section 104 of the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 878), which added subsection 101(c) to the Defense Production Act of 1950, as amended (the Act); and

(b) Delegates authority and assigns responsibility related thereto pursuant to sections 7 and 8 of Executive Order 11912, dated April 13, 1976.

§ 330.2 Policies.

(a) The authority of subsection 101(c) of the Act to require the allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment to maximize domestic energy supplies shall be limited to those exceptional circumstances when it is found that:

(1) Such supplies of material and equipment are scarce, critical, and essential; and

(2) The maintenance or furtherance of exploration, production, refining, transportation, or conservation of energy supplies, or the construction and maintenance of energy facilities, cannot reasonably be accomplished without exercising this authority.

(b) The authority contained in subsection 101(c) shall not be used to require priority performance under contracts or orders relating to, or the allocation of, any supplies of materials and equipment except for programs or projects to maximize domestic energy supplies as specifically determined by the Secretary of Energy, after coordination with the Director, Federal Emergency Management Agency.

(c) The allocation of, or priority performance under contracts or orders relating to, supplies of materials and equipment in support of authorized programs or projects shall be so undertaken as to ensure that:

(1) Supplies of the specified materials and equipment are available to the extent practicable on time and in proper quantity to authorized programs or projects.

(2) The demands of these authorized programs or projects are distributed among suppliers on a fair and equitable basis.

(3) Allotments of supplies of materials and equipment are not made in excess of actual current requirements of these authorized programs or projects.

(4) Fulfillment of the needs of these authorized programs and projects are achieved in such manner and to such degree as to minimize hardship in the market place.

(d) The authority of subsection 101(c) of the Act will not be used to control the general distribution of any supplies of material and equipment in the civilian market, as that phrase is used in subsection 101(b) of the Act, except after Presidential approval as required by subsection 7(d) of Executive Order 11912.

§ 330.3 Delegation of authority.

(a) The functions of the Director of the Federal Management Agency under subsection 101(c) of the Act are hereby delegated to the Secretary of Commerce with respect to the areas of responsibility designated and subject to the limitations prescribed and section 7 of Executive Order 11912. Specifically:

(1) The Secretary of Commerce is delegated the function, provided in subsection 101(c)(1) of the Act, of requiring the allocation of, or priority performance under contracts or orders (other than contracts of employment) relating to, supplies of materials and equipment to maximize domestic energy supplies, if the findings specified in subsection 101(c)(3) of the Act are made.

(2) The Secretary of Commerce is delegated those functions provided in subsection 101(c)(3) of the Act, but shall redelegate to the Secretary of Energy the function of making the findings that supplies of materials and equipment are critical and essential to maximize domestic energy supplies. The Secretary of Commerce shall retain the functions of finding that supplies of materials and equipment are scarce, and that the purposes described in subsection 101(c)(3)(B) of the Act cannot reasonably be accomplished without exercising the authority specified in subsection 101(c)(1). This finding will include, to the extent practicable, an assessment of the effects of using the authority for the project in question on other significantly impacted projects.

(b) The Director of the Federal Emergency Management Agency shall be responsible for the overall coordination and direction of the functions provided by subsection 101(c) of the Act in a manner similar to the exercise of functions under subsections 101(a) and 101(b) of the Act. In line with these functions, the Director is also responsible for resolving any conflicts between claimant agencies regarding particular supplies of materials and equipment. In addition, the Federal Emergency Management Agency will monitor the impact of the implementation of the authorities of subsection 101(c) and other authorities under section 101 of the Defense Production Act on each other and on the national economy.

(c) The functions assigned, delegated, or required to be redelegated by this order to the Secretary of Commerce and the Secretary of Energy may not be redelegated to other agencies without first being coordinated with the Director, Federal Emergency Management Agency.

(d) Procedures to execute the above delegations will be carried out in accordance with guidance provided by the Director, Federal Emergency Management Agency, pursuant to this order and Executive Order 11912.

PART 331—PRESERVATION OF THE MOBILIZATION BASE THROUGH THE PLACEMENT OF PROCUREMENT AND FACILITIES IN LABOR SURPLUS AREAS

Sec.
331.1 Purpose.
331.2 Policy.
331.3 Scope and applicability.
331.4 Special consideration
331.5 Production facilities.

Authority: Reorganization Plan No. 3 of 1978, E.O. 10480, as amended, E.O. 12148.

Source: 45 FR 34885, May 23, 1980, unless otherwise noted. Redesignated at 45 FR 44575, July 1, 1980.

§ 331.1 Purpose.

Success of the national defense program depends upon efficient use of all of our resources, including the labor force and production facilities, which are preserved through utilizing the skills of both management and labor. A primary aim of Federal manpower policy is to encourage full utilization of existing production facilities and workers in preference to creating new plants or moving workers, thus assisting in the maintenance of economic balance and employment stability. When large numbers of new workers move to labor surplus areas, heavy burdens are placed on community facilities, such as schools, hospitals, housing, transportation, and utilities. On the other hand, when unemployment develops in certain areas, unemployment costs increase the total cost to the Government, and plants, tools, and workers' skills remain idle and unable to contribute to our national defense program. Consequently, it is the purpose of Defense Manpower Policy No. 4B to direct attention to the potential of labor surplus areas when awarding appropriate procurement contracts and when locating new plants or facilities.

§ 331.2 Policy.

(a) It is the policy of the Federal Government to award appropriate contracts to eligible labor surplus area concerns, to place production facilities in labor surplus areas, and to make the best use of our natural, industrial and labor resources in order to achieve the following objectives:

(1) To preserve management and employee skills necessary to the fulfillment of Government contracts and purchases;

(2) To maintain productive facilities;

(3) To improve utilization of the Nation's total economic potential by making use of the labor force resources of each area; and

(4) To help ensure timely delivery of required goods and services and to promote readiness for mobilization by locating procurement where the needed labor force and facilities are fully available.

(b) This policy is consonant with the intent of Pub. L. 95-89 and Pub. L. 95-507 as implemented by E.O. 12073. In carrying out this policy, Federal departments and agencies shall be guided by E.O. 12073, the policy direction of the Office of Federal Procurement Policy and implementing regulations.

§ 331.3 Scope and applicability.

The provisions of this policy apply to all Federal departments and agencies, except as otherwise prohibited by law. In addition to these normal duties;

(a) The Secretary of Commerce shall:

(1) In cooperation with State economic development agencies, the Secretary of Defense, the Administrator of General Services, and the Administrator of Small Business Administration, assist concerns which have agreed to perform contracts in labor surplus areas in obtaining Government procurement business by providing such concerns with timely information on proposed Government procurements.

(2) Urge concerns planning new production facilities to consider the advantages of locating in labor surplus areas.

(3) Provide technical advice and counsel to groups and organizations in labor surplus areas on planning industrial parks, industrial development organizations, expanding tourist business, and available Federal aids.

(b) The Administrator of the Small Business Administration shall make available to small business concerns in labor surplus areas all of its services, endeavor to ensure opportunity for maximum participation by such concerns in Government procurement, and give consideration to the needs of these concerns in the making of joint small business set-asides with Government procurement agencies.

(c) OFPP shall coordinate the maintenance by Federal agencies of current information on the manufacturing capabilities of labor surplus area concerns with respect to Government procurement and disseminate such information to Federal departments and agencies.

§ 331.4 Special consideration.

When an entire industry that sells a significant proportion of its production to the Government is generally depressed or has a significant proportion of its production, manufacturing and service facilities located in a labor surplus area, the Director, Federal Emergency Management Agency, or successor in function, after notice to and hearing of interested parties, will give consideration to appropriate measures applicable to the entire industry.

§ 331.5 Production facilities.

All Federal departments and agencies shall give consideration to labor surplus areas in the selection of sites for Government-financed production facilities, including expansion, to the extent that such selection is consistent with existing law and essential economic and strategic factors.

PART 332—VOLUNTARY AGREEMENTS UNDER SECTION 708 OF THE DEFENSE PRODUCTION ACT OF 1950, AS AMENDED

Sec.

332.1 General provisions.
332.2 Developing voluntary agreements.
332.3 Carrying out voluntary agreements.
332.4 Termination or modifying voluntary agreements.
332.5 Public access to records and meetings.

Authority: Sec. 708, Defense Production Act of 1950, as amended (50 U.S.C. App. 2158); E.O. 10480, 3 CFR 1949-1953 Comp. p. 961, as amended; E.O. 12148, 44 FR 43239.

Source: 46 FR 2350, Jan. 9, 1981, unless otherwise noted.

§ 332.1 General provisions.

(a) Pursuant to section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158), the President may consult with representatives of industry, business, financing, agriculture, labor, or other interests, and may approve the making of voluntary agreements to help provide for the defense of the United States by developing preparedness programs and expanding productive capacity and supply beyond levels needed to meet essential civilian demand.

(b) *Sponsor.* (1) As used in this part, "sponsor" of a voluntary agreement is an officer of the Government who, pursuant to a delegation or redelegation of the functions given to the President by section 708 of the Defense Production Act (DPA) of 1950, as amended, proposes or otherwise provides for the development or carrying out of a voluntary agreement.

(2) The use of voluntary agreements, as authorized by section 708 of the DPA to help provide for the defense of the United States through the development of preparedness programs, is an activity coordinated by the Director of the Federal Emergency Management Agency, as provided by sections 101 and 501(a) of Executive Order 10480, as amended.

(3) The sponsor of a voluntary agreement shall carry out sponsorship functions subject to the direction and control of the Director of the Federal Emergency Management Agency.

(c) This part applies to the development and carrying out under section 708 of the DPA, as amended, of all voluntary agreements, and the carrying out of any voluntary agreement which was entered into under former section 708 of the DPA and in effect immediately prior to April 14, 1976, and which is in a period of extension as authorized by subsection 708(f)(2) of the DPA.

(d) The rules in the part void any provision of a voluntary agreement to which they apply, if that provision is contrary to or inconsistent with them. Each voluntary agreement shall be construed as containing every substantive provision that these rules require, whether or not a particular provision is included in the agreement.

(e) Pursuant to subsection 708(d) of the DPA, the sponsor may establish such advisory committees as he deems to be necessary for developing or carrying out voluntary agreements. Such advisory committees shall comply with this part as well as with the requirements and procedures of the Federal Advisory Committee Act (Pub. L. 92-463, as amended).

§ 332.2 Developing voluntary agreements.

(a) *Purpose and scope.* This section establishes the standards and procedures by which voluntary agreements may be developed through consultation, pursuant to subsection 708(c) of the DPA.

(b) *Proposal to develop an agreement.* (1) A sponsor who wishes to develop a voluntary agreement shall submit to the Attorney General and the Director of the Federal Emergency Management Agency a document proposing the agreement. The proposal will include statements as to: the purpose of the agreement; the factual basis for making the finding required in subsection 708(c)(1) of the DPA; the proposed participants in the agreement; and any coordination with other Federal agencies accomplished in connection with the proposal.

(2) If the Attorney General, after consultation with the Chairman of the Federal Trade Commission, approves this proposal, the sponsor shall then initiate one or more meetings of interested persons to develop the agreement.

(c) *Conduct of meetings held to develop the agreement.* (1) The sponsor shall give to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency adequate written notice of each meeting to develop a voluntary agreement. The sponsor shall also publish in the FEDERAL REGISTER notice of the time, place, and nature of each meeting at least seven days prior to the meeting.

(2) The sponsor shall chair each meeting held to develop a voluntary agreement. Both the Attorney General and the Chairman of the Federal Trade Commission, or their delegates, shall attend each of these meetings.

(3) Any interested person may attend a meeting held to develop a voluntary agreement, unless the sponsor of the agreement limits attendance pursuant to § 332.5 of this part.

(4) Any interested person may, as set out in the FEDERAL REGISTER meeting notice, submit written data and views concerning the proposed voluntary agreement, and at the discretion of the Chairman of the meeting, may be given the opportunity for oral presentation.

(d) *Maintenance of records.* (1) The sponsor is responsible for the making of a full and verbatim transcript of each meeting. The Chairman shall send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Federal Emergency Management Agency, and any other party or repository required by law.

(2) The sponsor of a voluntary agreement shall maintain each meeting transcript and voluntary agreement, and make them available for public inspection and copying the extent required by § 332.5 of this part.

(e) *Effectiveness of agreements.* The following steps must occur before a new voluntary agreement or an extension of an existing agreement may become effective:

(1) The sponsor must approve the agreement and certify in writing that it is necessary to carry out the purposes of subsection 708(c)(1) of the DPA;

(2) The Director of the Federal Emergency Management Agency must approve this certification, and submit it to the Attorney General with a request for a written finding; and

(3) The Attorney General, after consulting with the Chairman of the Federal Trade Commission, must issue a written finding that the purposes of subsection 708(c)(1) can not reasonably be achieved through a voluntary agreement having less anti-competitive effects or without any voluntary agreement.

§ 332.3 Carrying out voluntary agreements.

(a) *Purpose and scope.* This section establishes the standards and procedures by which the participants in each approved voluntary agreement shall carry out the agreement.

(b) *Participants.* The participants in each voluntary agreement shall be reasonably representative of the appropriate industry or segment of that industry.

(c) *Conduct of meetings held to carry out an agreement.* (1) The sponsor of a voluntary agreement shall initiate, or approve in advance, each meeting of the participants in the agreement held to discuss problems, determine policies, recommend actions, and make decisions necessary to carry out the agreement.

(2) The sponsor shall provide to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency adequate prior notice of the time, place, and nature of each meeting, and a proposed agenda of each meeting. The

sponsor shall also publish in the FEDERAL REGISTER, reasonably in advance of each meeting, a notice of time, place, and nature of the meeting. If the sponsor has determined, pursuant to § 332.5 of this part, to limit attendance at the meeting, the sponsor shall publish this FEDERAL REGISTER notice within ten days of the meeting.

(3) Any interested person may attend a meeting held to carry out a voluntary agreement unless the sponsor has restricted attendance pursuant to § 332.5 of this part. A person attending a meeting under this section may present oral or written data, views, and arguments to any limitations on the manner of presentation that the sponsor may impose.

(4) No meeting shall be held to carry out any voluntary agreement unless a Federal employee, other than an individual employed pursuant to 5 U.S.C. 3109, is in attendance. Any meeting to carry out a voluntary agreement may be attended by the sponsor of the agreement, the Attorney General, the Chairman of the Federal Trade Commission, the Director of the Federal Emergency Management Agency, or their delegates.

(5) Notwithstanding any other provision of this section, a meeting between a single participant and the sponsor solely to deliver or exchange information is not subject to the requirements and procedures of this section, provided that a copy of the information is promptly delivered to the Attorney General, the Chairman of the Federal Trade Commission, and the Director of the Federal Emergency Management Agency.

(d) *Maintenance of records.* (1) The participants in any voluntary agreement shall maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications among themselves or with any other member of their industry, related to the carrying out of the voluntary agreement. The participants shall agree, in writing, to make available to the sponsor, the Attorney General, the Chairman of the Federal Trade Commission and the Director of the Federal Emergency Management Agency for inspection and copying at reasonable times and upon reasonable notice any item that this section requires them to maintain.

(2) Any person required by this paragraph to maintain records shall indicate specific portions, if any, that such person believes should not be disclosed to the public pursuant to § 332.5 of this part, and the reasons therefor. Any item made available to a Government official named in this paragraph shall be available from that official for public inspection and copying to the extent set forth in § 332.5 of this part.

§ 332.4 Termination or modifying voluntary agreements.

The Attorney General may terminate or modify a voluntary agreement, in writing, after consultation with the Chairman of the Federal Trade Commission and the sponsor of the agreement. The sponsor of the agreement, with the concurrence of or at the direction of the Director of the Federal Emergency Management Agency, may terminate or modify a voluntary agreement, in writing, after consultation with the Attorney General and the Chairman of the Federal Trade Commission. Any person who is a party to a voluntary agreement may terminate his participation in the agreement upon written notice to the sponsor. Any antitrust immunity conferred upon the participants in that agreement by subsection 708(j) of the DPA shall not apply to any act or omission occurring after the termination of the voluntary agreement. Immediately upon modification of a voluntary agreement, no antitrust immunity shall apply to any subsequent act or omission that is beyond the scope of the modified agreement.

§ 332.5 Public access to records and meetings.

(a) Interested persons may, pursuant to 5 U.S.C. 552, inspect or copy any voluntary agreement, minutes of meetings, transcripts, records, or other data maintained pursuant to these rules.

(b) Except as provided by paragraph (c) of this section, interested persons may attend any part of a meeting held to develop or carry out a voluntary agreement pursuant to these rules.

(c) The sponsor of a voluntary agreement may withhold material described in this section from disclosure and restrict attendance at meetings only on the grounds specified in:

(1) Section 552(b)(1) of 5 U.S.C., which applies to matter specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy. This section shall be interpreted to included matter protected under Executive Order 12065, dated June 28, 1978 (3 CFR 1970-1975 Comp. p. 678), establishing categories and criteria for classification; and

(2) Section 552(b)(3) of 5 U.S.C., which applies to matter specifically exempted from disclosure by statute; and

(3) Section 552(b)(4) of 5 U.S.C., which applies to trade secrets and commercial or financial information obtained from a person as privileged and confidential.

PART 333—PEACETIME SCREENING

Sec.
333.1 Purpose.
333.2 Scope and applicability.
333.3 Policy.
333.4 Procedures.
333.5 Responsibilities.

Authority: 50 U.S.C. 404; 50 U.S.C. App. 2061 *et seq.;* E.O. 12148; E.O. 11190, as amended by E.O. 11382.

Source: 47 FR 7240, Feb. 18, 1982, unless otherwise noted.

§ 333.1 Purpose.

To provide procedures for eliminating conflict between key civil employment and military assignment of Ready Reservists in the event of a mobilization of the Ready Reserve.

§ 333.2 Scope and applicability.

(a) Employees are responsible for informing employers of their reserve status. If mobilization is directed, procedures in § 333.4(e) will terminate and all members of the Ready Reserve will be subject to mobilization.

(b) Employers in State and local governments and private industry should identify and inform the Department of Defense of those reservists who continue to occupy key positions in their organizations after other remedies to staff these positions with non-reserve personnel are inappropriate.

[47 FR 7240, Feb. 18, 1982, as amended at 51 FR 34606, Sept. 30, 1986]

§ 333.3 Policy.

(a) Ready Reservists will be called into active military service in a national emergency. No deferment from mobilization will be granted because of civil employment.

(b) The Federal Emergency Management Agency and the Department of Defense recognize that a potential for conflict between military and civil employment could exist for Ready Reservists. They have agreed to consider changing a reservist's assignment if they are essential civil employees. This change in status could only be made prior to a mobilization.

(c) It is in the interest of employers that key positions held by Ready Reservists be screened and appropriate steps be taken to correct military and civil assignments.

§ 333.4 Procedures.

Prior to a mobilization, State and local governments, and private industry may identify all key employees who are members of the Ready Reserve, assess impact on their organization of a call-up of Reservists, and use the following procedures as appropriate:

(a) Prepare other employees to assume the essential functions of Ready Reservists.

(b) Transfer the essential functions of Ready Reservists to other employees.

(c) Develop plans to fill positions vacated by Ready Reservists in a mobilization.

(d) Make other arrangements to have the essential functions of Ready Reservists performed.

(e) If these remedies are not appropriate, these organizations can use the criteria and procedures in Department of Defense Regulation 32 CFR Part 44 on a case-by-case basis to request that particular key employees be screened out of the Ready Reserve.

§ 333.5 Responsibilities.

(a) Employers of Ready Reservists may notify the Armed Forces in order to determine if potential conflicts affecting their employees between military or civil duties warrant change in Ready Reserve status. The Department of Labor, through appropriate national and regional offices, will be available to advise State and local government and private industry in support of a mobilization and assist such entities in substantiating their claims for essential civil positions.

(b) The Department of Defense may advise civilian employers of Ready Reservists of their employees' Ready Reserve status, including name, social security number, and other data necessary to identify Ready Reserve employees.

(c) In all cases, 32 CFR Part 44 procedures shall pertain. If an organization's request for exemption from military duties is denied by DOD and should continued conflict between DOD and employers persist on essential civil employment, on the basis of criteria adopted jointly by the Departments of Commerce, Defense, and Labor and the Federal Emergency Management Agency, then FEMA shall adjudicate the differences.

PARTS 334–349 [RESERVED]

PART 350—REVIEW AND APPROVAL OF STATE AND LOCAL RADIOLOGICAL EMERGENCY PLANS AND PREPAREDNESS

Sec.
350.1 Purpose.
350.2 Definitions.
350.3 Background.
350.4 Exclusions.
350.5 Criteria for review and approval of State and local radiological emergency plans and preparedness.
350.6 Assistance in development of State and local plans.
350.7 Application by State for review and approval.
350.8 Initial FEMA action on State plan.
350.9 Exercises.
350.10 Public meeting in advance of FEMA approval.
350.11 Action by FEMA Regional Director.
350.12 FEMA Headquarters review and approval.
350.13 Withdrawal of approval.
350.14 Amendment to State plans.
350.15 Appeal procedures.

AUTHORITY: 42 U.S.C. 5131, 5201, 50 U.S.C. App. 2253(g); Sec. 109 Pub. L. 96-295; Reorganization Plan No. 3 of 1978; E.O. 12127; E.O. 12148.

SOURCE: 48 FR 44335, Sept. 28, 1983, unless otherwise noted.

§ 350.1 Purpose.

The purpose of the regulation in this part is to establish policy and procedures for review and approval by the Federal Emergency Management Agency (FEMA) of State and local emergency plans and preparedness for the offsite effects of a radiological emergency which may occur at a commercial nuclear power facility. Review and approval of these plans and preparedness involves preparation of findings and determinations of the adequacy of the plans and capabilities of State and local governments to effectively implement the plans.

§ 350.2 Definitions.

As used in this part, the following terms are defined:

(a) *Director* means the Director, FEMA, or designee;

(b) *Regional Director* means a Regional Director of FEMA, or designee;

(c) *Associate Director* means the Associate Director, State and Local Programs and Support, FEMA, or designee;

(d) *FEMA* means the Federal Emergency Management Agency;'

(e) *NRC* means the Nuclear Regulatory Commission;

(f) *EPZ* means Emergency Planning Zone.

(g) *Emergency Planning Zone* (*EPZ*) is a generic area around a commercial nuclear facility used to assist in offsite emergency planning and the development of a significant response base. For commercial nuclear power plants, EPZs of about 10 and 50 miles are delineated for the plume and ingestion exposure pathways respectively.

(h) *Plume Exposure Pathway* refers to whole body external exposure to gamma radiation from the plume and from deposited materials and inhalation exposure from the passing radioactive plume. The duration of primary exposures could range in length from hours to days.

(i) *Ingestion Exposure Pathway* refers to exposure primarily from ingestion of water or foods such as milk and fresh vegetables that have been contaminated with radiation. The duration of primary exposure could range from hours to months.

(j) *Full participation* refers to an exercise in which: (1) State and local government emergency personnel are engaged in sufficient numbers to verify the capability to respond to the actions required by the accident scenario; (2) the integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant is tested; and (3) the implementation of the observable portions of State and/or local plans is tested.

(k) *Partial participation* refers to the engagement of State and local government emergency personnel in an exercise sufficient to adequately test direction and control functions for protective action decisionmaking related to emergency action levels and communication capabilities among affected State and local governments and the licensee.

(l) *Remedial exercise* is one that tests deficiencies of previous joint exercise that are considered significant enough to impact on the public health and safety.

(m) *Local government* refers to boroughs, cities, counties, municipalities, parishes, towns, townships and other local jurisdictions within the plume exposure pathway EPZ when any of these entities has specific roles in emergency planning and preparedness in the EPZ.

(n) *Site* refers to the location at which there is one or more commercial nuclear power plants. A nuclear power plant is synonymous with a nuclear power facility.

§ 350.3 Background.

(a) On December 7, 1979, the President directed the Director of FEMA to take the lead in State and local emergency planning and preparedness activities with respect to nuclear power facilities. This included a review of the existing emergency plans both in States with operating reactors and those with plants scheduled for operation in the near future.

(b) This assignment was given to FEMA because of its responsibilities under Executive Order 12148 to establish Federal policies for and coordinate civil emergency planning, management and assistance functions and to represent the President in working with State and local governments and the private sector to stimulate vigorous participation in civil emergency preparedness programs. Under section 201 of the Disaster Relief Act of 1974 (42 U.S.C. 5131), and other statutory functions, the Director of FEMA is charged with the responsibility to develop and implement plans and programs of disaster preparedness.

(c) There are two sections in the NRC's fiscal year 1982/1983 Appropriation Authorization (Pub. L. 97-415) that pertain to the scope of this rule:

(1) Section 5 provides for the issuance of an operating license for a commercial nuclear power plant by the NRC if it is determined that there exists a State, local or utility plan which provides assurance that public health and safety is not endangered by the operation of the facility. This section would allow the NRC to issue an operating license for such plants without FEMA-approved State and local government plans.

(2) Section 11 provides for the issuance of temporary licenses for operating a utilization facility at a specific power level to be determined by the Commission, pending final action by the Commission on the application. Also, this section authorizes the NRC to issue temporary operating licenses for these facilities without the completion of the required (NRC) Commission hearing process. A petition for such a temporary license may not be filed until certain actions are completed including the submission of a State, local or utility emergency response plan for the facility.

(d) To carry out these responsibilities, FEMA is engaged in a cooperative effort with State and local governments and other Federal agencies in the development of State and local plans and preparedness to cope with the offsite effects resulting from radiological emergencies at commercial nuclear power facilities. FEMA developed and published the Federal Radiological Emergency Response Plan 50 FR 46542 Nov. 8, 1985, to provide the overall support to State and local governments, for all types of radiological incidents including those occurring at nuclear power plants.

(e) FEMA has entered into a Memorandum of Understanding (MOU) with the NRC to which it will furnish assessments, findings and determinations as to whether State and local emergency plans and preparedness are adequate and continue to be capable of implementation (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). These findings and determinations will be used by NRC under its own rules in connection with its licensing and regulatory requirements and FEMA will support its findings in the NRC licensing process and related court proceedings.

(f) Notwithstanding the procedures set forth in these rules for requesting and reaching a FEMA administrative approval of State and local plans, findings and determinations on the current status of emergency preparedness around particular sites may be requested by the NRC and provided by FEMA for use as needed in the NRC licensing process. These findings and determinations may be based upon plans currently available to FEMA or furnished to FEMA by the NRC through the NRC/FEMA Steering Committee.

(g) An environmental assessment has been prepared on which FEMA has determined that this rule will not have a significant impact on the quality of the human environment.

[48 FR 44335, Sept. 28, 1983, as amended at 51 FR 34606, Sept. 30, 1986]

§ 350.4 Exclusions.

The regulation in this part does not apply to, nor will FEMA apply any criteria with respect to, any evaluation, assessment or determination regarding the NRC licensee's emergency plans or preparedness, nor shall FEMA make any similar determination with respect to the integration of offsite and NRC licensee emergency preparedness except as these assessments and determinations affect the emergency preparedness of State and local governments. The regulation in this part applies only to State and local planning and preparedness with respect to emergencies at commercial nuclear power facilities and does not apply to other facilities which may be licensed by NRC, nor to United States Government-owned, non-licensed facilities nor the jurisdictions surrounding them.

§ 350.5 Criteria for review and approval of State and local radiological emergency plans and preparedness.

(a) Section 50.47 of NRC's Emergency Planning Rule [10 CFR Parts 50 (Appendix E) and 70 as amended] and the joint FEMA-NRC *Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants* (NUREG-0654/FEMA-REP-1, Rev. 1, November 1980) which apply insofar as FEMA is concerned to State and local governments, are to be used in reviewing, evaluating and approving State and local radiological emergency plans and preparedness and in making any findings and determinations with respect to the adequacy of the plans and the capabilities of State and local governments to implement them. Both the planning and preparedness standards and related criteria contained in NUREG-0654/FEMA-REP-1, Rev. 1 are to be used by FEMA and the NRC in reviewing and evaluating State and local government radiological emergency plans and preparedness. For brevity, only the planning standards contained in NUREG-0654/ FEMA-REP-1, Rev. 1 are presented below.

(1) Primary responsibilities for emergency response by the nuclear facility licensee, and by State and local organizations within the Emergency Planning Zones have been assigned, the emergency responsibilities of the various supporting organizations have been specifically established and each principal response organization has

staff to respond to and augment its initial response on a continuous basis.

(2) On-shift facility licensee responsibilities for emergency response are unambiguously defined, adequate staffing to provide initial facility accident response in key functional areas is maintained at all times, timely augmentation of response capabilities is available and the interfaces among various onsite response activities and offsite support and response activities are specified. (This standard applies only to NRC licensees but is included here for completeness.)

(3) Arrangements for requesting and effectively using assistance resources have been made, arrangements to accommodate State and local staff at the licensee's near-site Emergency Operations Facility have been made and other organizations capable of augmenting the planned response have been identified.

(4) A standard emergency classification and action level scheme, the bases of which include facility system and effluent parameters, is in use by the nuclear facility licensee, and State and local response plans call for reliance on information provided by facility licensees for determinations of minimum initial offsite response measures.

(5) Procedures have been established for notification, by the licensee, of State and local response organizations and for the notification of emergency personnel by all response organizations; the content of initial and follow-up messages to response organizations and the public has been established; and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

(6) Provisions exist for prompt communications among principal response organizations to emergency personnel and to the public.

(7) Information is made available to the public on a periodic basis on how they will be notified and what their initial actions should be in an emergency (e.g., listening to a local broadcast station and remaining indoors), the principal points of contact with the news media for dissemination of information during an emergency (including the physical location or locations) are established in advance and procedures for coordinated dissemination of information to the public are established.

(8) Adequate emergency facilities and equipment to support the emergency response are provided and maintained.

(9) Adequate methods, systems and equipment for assessing and monitoring actual or potential offsite consequences of a radiological emergency condition are in use.

(10) A range of protective actions has been developed for the plume exposure pathway EPZ for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidance, are developed and in place and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

(11) Means for controlling radiological exposures, in an emergency, are establishd for emergency workers. The means for controlling radiological exposures shall include exposure guidelines consistent with EPA Emergency Worker and Lifesaving Activity Protective Action Guides.

(12) Arrangements are made for medical services for contaminated injured individuals.

(13) General plans for recovery and reentry are developed.

(14) Periodic exercises are (will be) conducted to evaluate major portions of emergency response capabilities, periodic drills are (will be) conducted to develop and maintain key skills and deficiencies identified as a result of exercises or drills are (will be) corrected.

(15) Radiological emergency response training is provided to those who may be called upon to assist in an emergency.

(16) Responsibilities for plan development and review and for distribution of emergency plans are established, and planners are properly trained.

(b) In order for State of local plans and preparedness to be approved, such plans and preparedness must be determined to adequately protect the public health and safety by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency.

§ 350.6 Assistance in development of State and local plans.

(a) An integrated approach to the development of offsite radiological emergency plans by States, localities and the licensees of NRC with the assistance of the Federal Government is the approach most likely to provide the best protection to the public. Hence, Federal agencies, including FEMA Regional staff, will be made available upon request to assist States and localities in the development of plans.

(b) There now exists in each of the ten standard Federal Regions a Regional Assistance Committee (RAC) (formerly the Regional Advisory Committee) chaired by a FEMA Regional official and having members from the Nuclear Regulatory Commission, Department of Health and Human Services, Department of Energy, Department of Transportation, Environmental Protection Agency, the United States Department of Agriculture and Department of Commerce. Whereas in 44 CFR Part 351, the Department of Defense is listed as a potential member of the RACs, it is not listed in this rule because military nuclear facilities are not the subject of concern. The RACs will assist State and local government officials in the development of their radiological emergency response plans, and will review plans and observe exercises to evaluate the adequacy of these plans and related preparedness. This assistance does not include the actual writing of State and local government plans by RAC members.

(c) In accomplishing the foregoing, the RACs will use the standards and criteria in NUREG-0654/FEMA-REP-1, Rev. 1, and will render such technical assistance as may be required, appropriate to their agency mission and expertise. In observing and evaluating exercises, the RACs will identify, soon after an exercise, any deficiencies observed in the planning and preparedness effort including deficiencies in resources, training of staff, equipment, staffing levels and deficiencies in the qualifications of personnel.

§ 350.7 Application by State for review and approval.

(a) A State which seeks formal review and approval by FEMA of the State's radiological emergency plan shall submit an application for such review and approval to the FEMA Regional Director of the Region in which the State is located. The application, in the form of a letter from the Govenor or from such other State official as the Governor may designate, shall contain one copy of the completed State plan, including coverage of response in the ingestion exposure pathway EPZ. The application will also include plans of all appropriate local governments. The application shall specify the site or sites for which plan approval is sought. For guidance on the local government plans that should be included with an application, refer to Part I.E. NUREG-0654/FEMA-REP-1, Rev. 1, entitled Contiguous Jurisdiction Governmental Emergency Planning (see (e)). Only a State may request formal review of State or local radiological emergency plans.

(b) Generally, the plume exposure pathway EPZ for nuclear power facilities shall consist of an area about 10 miles (16 Km) in radius and the ingestion exposure pathway EPZ shall consist of an area about 50 miles (80 Km) in radius. The exact size and configuration of the EPZs surrounding a particular nuclear power facility shall be determined by State and local governments in consultation with FEMA and NRC taking into account such local conditions as demography, topography, land characteristics, access routes and local jurisdiction boundaries. The size of the EPZs may be determined by NRC in consultation with FEMA on a case-by-case basis for gas cooled reactors and for reactors with an authorized power level less than 250 Mw thermal. The plans for the ingestion exposure pathway shall focus on such actions as are appropriate to protect the public from ingesting contaminated food and water.

(c) A State may submit separately its plans for the EPZs and the local government plans related to individual nuclear power facilities. The purpose of separate submissions is to allow approval of a State plan, and of the plans necessary for specific nuclear power facilities in a multiple-facility State, while not approving or acting on the plans necessary for other nuclear power facilities within the State. If separate submissions are made, appropriate adjustments in the State plan may be necessary. In any event, FEMA approval of State plans and appropriate local government plans shall be site specific.

(d) The applications shall contain a statement that the State plan, together with the appropriate local plans, is, in the opinion of the State, adequate to protect the public health and safety of its citizens living within the emergency planning zones for the nuclear power facilities included in the submission by providing reasonable assurance that State and local governments can and intend to effect appropriate protective measures offsite in the event of a radiological emergency.

(e) FEMA and the States will make suitable arrangements in the case of overlapping or adjacent jurisdictions to permit an orderly assessment and approval of interstate or interregional plans.

§ 350.8 Initial FEMA action on State plan.

(a) The Regional Director shall acknowledge in writing within ten days the receipt of the State application.

(b) FEMA shall publish a notice signed by the Regional Director or designee in the FEDERAL REGISTER within 30 days after receipt of the application, that an application from a State has been received and that copies are available at the Regional Office for review and copying in accordance with 44 CFR 5.26.

(c) The Regional Director shall furnish copies of the plan to members of the RAC for their analysis and evaluation.

(d) The Regional Director shall make a detailed review of the State plan, including those of local governments, and assess the capability of State and local governments to effectively implement the plan (e.g., adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy). Evaluation and comments of the RAC members will be used as part of the review process.

(e) In connection with the review, the Regional Director may make suggestions to States concerning perceived gaps or deficiencies in the plans, and the State may amend the plan at any time prior to forwarding to the Associate Director of FEMA.

(f) Two conditions for FEMA approval of State plans (including local government plans) are the requirements for an exercise (see § 350.9), and for public participation (see §§ 350.9 and 350.10.). These activities occur during the Regional review and prior to the forwarding of the plan to the Associate Director.

§ 350.9 Exercises.

(a) Before a Regional Director can forward a State plan to the Associate Director for approval, the State, together with all appropriate local governments, must conduct a joint exercise of that State plan, involving full participation[1] of appropriate local government entities, the State and the appropriate licensee of the NRC. To the extent achievable, this exercise shall include participation by appropriate Federal agencies. This exercise shall be observed and evaluated by FEMA and by representatives of other Federal agencies with membership on the RACs and by NRC with respect to licensee response. Within 48 hours of the completion of the exercise, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Director to discuss the preliminary results of the exercise. If the exercise discloses any deficiencies in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials. To the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements or take other corrective measures, such as remedial exercises,[1] to demonstrate to the Regional Director that identified weaknesses have been corrected.

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[1] See § 350.2 for definitions of "full participation" and "remedial exercises".

(b) The Regional Director shall be the FEMA official responsible for certifying to the Associate Director that an exercise of the State plan has been conducted, and that changes and corrective measures in accordance with paragraph (a) of this section have been made.

(c) State and local governments that have fully participated in a joint exercise within one year prior to the effective date of this final rule will have continuing approval of their radiological emergency plans and preparedness by following the frequency indicated in paragraphs (c) (1) through (4) of this section. State and local governments that have not fully participated in a joint exercise within one year prior to the effective date of this final rule will follow the frequency indicated in paragraphs (c) (1) through (4) of this section after completion of a joint exercise in which they have fully participated. If, in developing exercise schedules with State and local governments to implement the requirements in paragraphs (c) (1) through (4) of this section, the Regional Director finds that unusual hardships would result, he may seek relief from the Associate Director.

(1) Each State which has a commercial nuclear power site within its boundaries or is within the 10-mile plume exposure pathway Emergency Planning Zone of such site shall fully participate in an exercise jointly with the nuclear power plant licensee and appropriate local governments at least every two years.

(2) Each State with multiple sites within its boundaries shall fully participate in a joint exercise at some site on a rotational basis at least every 2 years. When not fully participating in an exercise at a site, the State shall partially participate[2] at that site to support the full participation of appropriate local governments. Priority shall be given to new facilities seeking an operating license from the NRC and which have not fully participated in a joint exercise involving the State, local governments and the licensee at that site. State and local governments will coordinate the scheduling of these exercises with the appropriate FEMA and NRC Regional Offices and the affected licensees.

(3) Each appropriate local government which has a site within its boundaries or is within the 10-mile emergency planning zone shall fully participate in a joint exercise with the licensee and the State at least every two years. For those local governments that have planning and preparedness responsibilities for more than one facility, the Regional Director may seek an exemption from this requirement by recommending alternative arrangements for approval by the Associate Director.

(4) States within the 50-mile emergency planning zone of a site shall exercise their plans and preparedness related to ingestion exposure pathway measures at least once every five years in conjunction with a plume exposure pathway exercise for that site.

(5) Remedial exercises may be required to correct deficiencies observed in exercises conducted for continued FEMA approval. Should this occur, the FEMA Regional Director will determine the participation required from the States and/or local governments.

(d) Within 48 hours of the completion of an exercise conducted for continued FEMA approval, a briefing involving the exercise participants and Federal observers shall be conducted by the Regional Director to discuss the preliminary results of the exercise. If the exercise discloses any deficiencies in the State and local plans, or the ability of the State and local governments to implement the plans, the FEMA representatives shall make them known promptly in writing to appropriate State officials. To the extent necessary, the State shall amend the plan to incorporate recommended changes or improvements or take other corrective measures, such as remedial exercises, to demonstrate to the Regional Director that identified weaknesses have been corrected. The Regional Director shall forward his or her evaluation of the exercise conducted for continued FEMA approval to the Associate Director including the certification that changes and corrective measures have been made.

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[2] See § 350.2 for definition of "partial exercise".

(e) Following the exercise conducted for continued FEMA approval, the Regional Director shall conduct a meeting in the vicinity of the nuclear power facility which will include the exercise participants, representatives from the NRC and other appropriate Federal agencies and the public and media as observers. The purpose of this meeting is to discuss the evaluation of the exercise. At the discretion of the Regional Director, written comments from the public and media may be submitted at or after the meeting. These comments will be taken into consideration by the Regional Director in his or her evaluation.

(f) After FEMA approval of a State and local plan has been granted, failure to exercise the State and local plans at the frequency and participation described in this section shall be grounds for withdrawing FEMA approval. (See § 350.13.)

§ 350.10 Public meeting in advance of FEMA approval.

(a) During the FEMA Regional Office review of a State plan and prior to the submission by the Regional Director of the evaluation of the plan and exercise to the Associate Director, the FEMA Regional Director shall assure that there is at least one public meeting conducted in the vicinity of the nuclear power facility. The purpose of such a meeting, which may be conducted by the State or by the Regional Director, shall be to:

(1) Acquaint the members of the public in the vicinity of each facility with the content of the State and related local plans, and with the conduct of the joint exercise which tested the plans;

(2) Answer any questions about FEMA review of the plan and the exercise;

(3) Receive suggestions from the public concerning improvements or changes that may be necessary; and

(4) Describe to the public the way in which the plan is expected to function in the event of an actual emergency.

(b) The Regional Director should assure that representatives from appropriate State and local government agencies, and the affected utility appear at such meetings to make presentations and to answer questions from the public. The public meeting should be held after the first joint (utility, State and local governments) exercise at a time mutually agreed to by State and local authorities, licensee and FEMA and NRC Regional officials. This meeting shall be noticed in the local newpaper with the largest circulation in the area, or other such media as the Regional Director may select, on at least two occasions, one of which is at least two weeks before the meeting takes place and the other is within a few days of the meeting date. Local radio and television stations should be notified of the scheduled meeting at least one week in advance. Representatives from NRC and other appropriate Federal agencies should also be invited to participate in these meetings. If, in the judgment of the FEMA Regional Director, the public meeting or meetings reveal deficiencies in the State plan and/or the joint exercise, the Regional Director shall inform the State of the fact together with recommendations for improvement. No FEMA approval of State and local plans and preparedness shall be made until a meeting described in this paragraph shall have been held at or near the nuclear power facility site for which the State is seeking approval.

§ 350.11 Action by FEMA Regional Director.

(a) Upon completion of his or her review, including conduct of the exercise required by § 350.9 and after the public meeting required by § 350.10, the Regional Director shall prepare an evaluation of the State plan, including plans for local governments. Such evaluation shall be specific with respect to the plans applicable to each nuclear facility so that findings and determinations can be made by the Associate Director on a site-specific basis.

(b) The Regional Director shall evaluate the adequacy of State and local plans and preparedness on the basis of the criteria set forth in § 350.5, and shall report the evaluation with respect to each of the planning standards mentioned therein as such apply to State and local plans and preparedness.

(c) The Regional Director shall forward the State plan together with his or her evaluation and other relevant record material to the Associate Director. Relevant record material will include the results of the exercise (i.e., deficiencies noted and corrections made), a summary of the deficiencies identified during the public meeting, recommendations made to the State and commitments made by the State for effecting improvements in its plans and preparedness and actions taken by the State.

§ 350.12 FEMA Headquarters review and approval.

(a) Upon receipt from a Regional Director of a State plan, the Associate Director shall conduct such review of the State plan as he or she shall deem necessary. The Associate Director shall arrange for copies of the plan, together with the Regional Director's evaluation, to be made available to the members of the Federal Radiological Preparedness Coordinating Committee (FRPCC) and to other offices of FEMA with appropriate guidance relative to any assistance that may be needed in the FEMA review and approval process.

(b) If, after formal submission of the State plan and the Regional Director's evaluation, the Associate Director determines that the State plans and preparedness:

(1) Are adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and

(2) Are capable of being implemented (e.g. adequacy and maintenance of procedures, training, resources, staffing levels and qualification and equipment adequacy); the Associate Director shall approve in writing the State plan. The Associate Director shall concurrently communicate this FEMA approval to the Governor of the State(s) in question, the NRC and the pertinent Regional Director(s) and immediately shall publish in the FEDERAL REGISTER a notice of this effect.

(c) If, after formal submission of the State plan, the Associate Director is not satisfied with the adequacy of the plan or preparedness with respect to a particular site, he or she shall concurrently communicate that decision to the Governor(s) of the State(s), the NRC and the pertinent Regional Director(s), together with a statement in writing explaining the reasons for the decision and requesting appropriate plan or preparedness revision. Such statement shall be transmitted to the Governor(s) through the appropriate Regional Director(s). The Associate Director shall immediately publish a notice to this effect in the FEDERAL REGISTER.

(d) The approval shall be of the State plan together with the local plans for each nuclear power facility (including out-of-State facilities) for which approval has been requested. FEMA may withhold approval of plans applicable to a specific nuclear power facility in a multi-facility State, but nevertheless approve the State plan and associated local plans applicable to other facilities in a State. Approval may be withheld for a specific site until plans for all jurisdictions within the emergency planning zones of that site have been reviewed and found adequate.

(e) Within 30 days after the date of notification of approval for a particular nuclear power facility or within 30 days of any statement of disapproval of a State plan, any interested person may appeal the decision of the Associate Director to the Director; however, such an appeal must be made solely upon the ground that the Associate Director's decision, based on the available record, was unsupported by substantial evidence. (See § 350.15 for appeal procedures.)

§ 350.13 Withdrawal of approval.

(a) If, at any time after granting approval of a State plan, the Associate

Director determines, on his or her own initiative, motion or on the basis of information another person supplied, that the State or local plan is no longer adequate to protect public health and safety by providing reasonable assurance that appropriate protective measures can be taken, or is no longer capable of being implemented, he or she shall immediately advise the Governor of the affected State, through the appropriate Regional Director and the NRC of that initial determination in writing. FEMA shall spell out in detail the reasons for its initial determination, and shall describe the deficiencies in the plan or the preparedness of the State. If, after four months from the date of such an initial determination, the State in question has not either:

(1) Corrected the deficiencies noted, or (2) submitted an acceptable plan for correcting those deficiencies, the Associate Director shall withdraw approval and shall immediately inform the NRC and the Governor of the affected State, of the determination to withdraw approval and shall publish in the FEDERAL REGISTER and the local newspaper having the largest daily circulation in the affected State notice of its withdrawal or approval. The basis upon which the Associate Director makes the determination for withdrawal of approval is the same basis used for reviewing plans and exercises, i.e., the planning standards and related criteria in NUREGO654/FEMA/REP-1, Rev. 1.

(b) In the event that the State in question shall submit a plan for correcting the deficiencies, the Associate Director shall negotiate a schedule and a timetable under which the State shall correct the deficiencies. If, on the agreed upon date, the deficiencies have been corrected, the Associate Director shall withdraw the initial determination and the approval previously granted shall remain valid. He or she shall inform the Governor(s), the NRC, the pertinent Regional Directors(s) and notify the public as stated in paragraph (a) of this section. If, however, on the agreed upon date, the deficiencies are not corrected, FEMA shall withdraw its approval and shall communicate its decision to the Governor of the State whose plan is in question, the NRC, the appropriate Federal agencies and notify the public as indicated above.

(c) Within 30 days after the date of notification of withdrawal of approval of a State or local plan, any interested person may appeal the decision of the Associate Director to the Director; however, such an appeal must be made solely upon the ground that the Associate Director's decision, based on the available record, was unsupported by substantial evidence. (See § 350.15 for appeal procedures.)

§ 350.14 Amendments to State plans.

(a) The State may amend a plan submitted to FEMA for review and approval under § 350.7 at any time during the review process or may amend a plan at any time after FEMA approval has been granted under § 350.12. A State must amend its plan in order to extend the coverage of the plan to any new nuclear power facility which becomes operational after a FEMA approval or in case of any other significant change. The State plan shall remain in effect as approved while any significant change is under review.

(b) A significant change is one which involves the evaluation and assessment of a planning standard or which involves a matter which, if presented with the plan, would need to have been considered by the Associate Director in making a decision that State or local plans and preparedness are:

(1) Adequate to protect the health and safety of the public living in the vicinity of the nuclear power facility by providing reasonable assurance that appropriate protective measures can be taken offsite in the event of a radiological emergency; and

(2) Capable of being implemented.

(c) A significant change will be processed in the same manner as if it were an initial plan submission. However, the Regional Director may determine that certain procedures, such as holding a public meeting or a complete exercise, would be unnecessary. The existing FEMA approval shall remain in effect while any significant changes are under review.

(d) Changes, such as a change in a telephone number, that are not significant as defined in paragraphs (b) and (c) of this section, but are necessary to maintain currency of the plan, should be forwarded to the Regional Director.

§ 350.15 Appeal procedures.

(a) Any interested person may appeal a decision made under §§ 350.12 and 350.13 of this part, by submitting to the Director, FEMA, a written notice of appeal, within 30 days after the appearance in the FEDERAL REGISTER, of the notice of decision relating to the matter being appealed. The appeal must be addressed to the Director, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC, 20472. The appeal letter shall state specific reasons for the appeal and include an offer to provide documentation supporting appellate arguments.

(b) Upon receipt of an appeal, the Director or the Director's designee shall review the file, as submitted to the Associate Director, State and Local Programs and Support, by the Regional Director of the FEMA Region concerned, based on the information contained in the file and the appeal letter, with supporting documentation. The Director or the Director's designee shall decide whether or not the Associate Director's initial decision was supported by substantial evidence in the file and is consistent with FEMA policy.

(c) The decision of the Director or the Director's designee shall be published in the FEDERAL REGISTER as the final agency decision on the matter and shall not be reviewable within FEMA, except upon a showing that it was procured by fraud or misrepresentation. In addition to publication in the FEDERAL REGISTER, copies of the decision shall be forwarded to the appellant, the Governor(s) of the State(s) affected, the NRC and the affected licensee of the involved power facility.

PART 351—RADIOLOGICAL EMERGENCY PLANNING AND PREPAREDNESS

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AUTHORITY: 5 U.S.C. 552, Reorganization Plan No. 3 of 1978, E.O. 12127, E.O. 12148, E.O. 12241; Presidential Directive of December 7, 1979.

SOURCE: 47 FR 10759, Mar. 11, 1982, unless otherwise noted.

Subpart A—General

§ 351.1 Purpose.

This part sets out Federal agency roles and assigns tasks regarding Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. Assignments in this part are applicable to radiological accidents at fixed nuclear facilities and transportation accidents involving radioactive materials.

§ 351.2 Scope.

The emergency planning and preparedness responsibilities covered by this part relate to consequences and activities which extend beyond the boundaries of any fixed nuclear facility with a potential for serious consequences and the area affected by a transportation accident involving radioactive materials.

§ 351.3 Limitation of scope.

(a) This part covers Federal agency assignments and responsibilities in connection with State and local emergency plans and preparedness measures. It does not set forth criteria used in the review and approval of these plans and does not include any of the requirements associated with FEMA findings and determinations on the adequacy of State and local government radiological emergency preparedness. FEMA has published a separate rule on procedures and criteria for reviewing and approving these plans and preparedness capabilities. Furthermore, this part does not set forth Federal agency responsibilities or capabilities for *responding to an accident* at a fixed nuclear facility or a transportation accident involving radioactive materials. These responsibilities are addressed in the "Federal Radiological Emergency Response Plan" (50 FR 46452, November 18, 1985).

(b) Nothing in this part authorizes access to or disclosure of classified information required to be protected in accordance with Federal law or regulation in the interest of national security.

[47 FR 10759, Mar. 11, 1982, as amended at 51 FR 34606, Sept. 30, 1986]

Subpart B—Federal Radiological Preparedness Coordinating Committee and Regional Assistance Committees

§ 351.10 Establishment of committees.

(a) The Federal Radiological Preparedness Coordinating Committee (FRPCC) consists of the Federal Emergency Management Agency, which chairs the Committee, Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, Department of Defense, United States Department of Agriculture, Department of Commerce and, where appropriate and on an ad hoc basis, other Federal departments and agencies. In chairing the committee, FEMA will be responsible for assuring that all agency assignments described in this rule are coordinated through the Committee and carried out with or on behalf of State and local governments.

(b) The Regional Assistance Committees (RACs), one in each of 10 standard Federal regions,[1] consist of a FEMA Regional Representative who chairs the Committee and representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Transportation, United States Department of Agriculture, Department of Commerce and other Federal departments and agencies such as the Department of Defense, as appropriate. The FEMA Chairperson of the RACs will provide guidance and orientation to other agency members to assist them in carrying out their functions.

§ 351.11 Functions of committees.

(a) The FRPCC shall assist FEMA in providing policy direction for the program of Federal assistance to State and local governments in their radiological emergency planning and preparedness activities. The FRPCC will establish subcommittees to aid in carrying out its functions; e.g., research, training, emergency instrumentation, transportation, information, education and Federal response. The FRPCC will assist FEMA in resolving issues relating to granting of final FEMA approval of a State plan. The FRPCC will coordinate research and study efforts of its member agencies related to State and local government radiological emergency preparedness to assure minimum duplication and maximum benefits to State and local governments. The FRPCC will also assure that the research efforts of its member agencies are coordinated with the Interagency Radiation Research Committee.

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[1] I (Boston); II (New York); III (Philadelphia); IV (Atlanta); V (Chicago); VI (Dallas); VII (Kansas City); VIII (Denver); IX (San Francisco) and X (Seattle).

(b) The RACs will assist State and local government officials in the development of their radiological emergency plans and will review these plans and observe exercises to evaluate adequacy of the plans. Each Federal agency member of the RACs will support the functions of these committees by becoming knowledgeable of Federal planning and guidance related to State and local radiological emergency plans, of their counterpart State organizations and personnel, where their agency can assist in improving the preparedness and by participating in RAC meetings.

Subpart C—Interagency Assignments

§ 351.20 The Federal Emergency Management Agency.

(a) Establish policy and provide leadership via the FRPCC in the coordination of all Federal assistance and guidance to State and local governments for developing, reviewing, assessing and testing the State and local radiological emergency plans.

(b) Issue guidance in cooperation with other Federal agencies concerning their responsibilities for providing radiological emergency planning and preparedness assistance to State and local governments.

(c) Foster cooperation of industry, technical societies, Federal agencies and other constituencies in the radiological emergency planning and preparedness of State and local governments.

(d) Develop and promulgate preparedness criteria and guidance to State and local governments, in coordination with other Federal agencies, for the preparation, review and testing of State and local radiological emergency plans.

(e) Provide assistance to State and local governments in the preparation, review and testing of radiological emergency plans.

(f) Assess, with the assistance of other Federal agencies, the adequacy of State and local government emergency plans and the capability of the State and local government officials to implement them (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications) and report the findings and determinations to NRC.

(g) Review and approve State radiological emergency plans and preparedness in accordance with FEMA procedures in 44 CFR Part 350.

(h) Develop, implement and maintain a program of public education and information to support State and local radiological emergency plans and preparedness.

(i) Develop and manage a radiological emergency response training program to meet State and local needs, using technical expertise and resources of other involved agencies. Develop and field test exercise materials and coordinate the Federal assistance required by States and localities in conducting exercises, including guidance for Federal observers.

(j) Develop, with NRC and other Federal Agencies, representative scenarios from which NRC licensed facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(k) Issue guidance for establishment of State and local emergency instrumentation systems for radiation detection and measurement.

(l) Provide guidance and assistance, in coordination with NRC and HHS, to State and local governments concerning the storage and distribution of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs as a result of radiological emergencies.

§ 351.21 The Nuclear Regulatory Commission.

(a) Assess NRC nuclear facility (e.g., commercial power plants, fuel processing centers and research reactors) licensee emergency plans for adequacy to protect the health and safety of the public.

(b) Verify that nuclear facility licensee emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(c) Review FEMA's findings and determinations of State and local radiological emergency plans for areas surrounding NRC licensed nuclear facilities.

(d) Take into account the overall state of emergency preparedness in making decisions to issue operating licenses or shut down licensed operating reactors, including the integration of assessments of emergency preparedness onsite by the NRC and offsite by FEMA.

(e) Where not already established, determine, in cooperation with other Federal agencies, the appropriate planning bases for NRC licensed nuclear facilities including distances, times and radiological characteristics.

(f) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(g) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(h) Assist FEMA and DOT in the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency plans.

(i) Provide representation to and support for the FRPCC and the RACs.

(j) Assist FEMA in the development, implementation and maintenance of public information and education programs.

(k) Assist FEMA with other Federal agencies in the development of representative scenarios from which nuclear facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(l) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(m) Assist FEMA with the development, implementation and presentation to the extent that resources permit of training programs for Federal, State and local radiological emergency preparedness personnel.

(n) Assist FEMA in providing guidance and assistance to State and local governments concerning the storage and distribution of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs as a result of radiological emergencies.

§ 351.22 The Environmental Protection Agency.

(a) Establish Protective Action Guides (PAGs) for all aspects of radiological emergency planning in coordination with appropriate Federal agencies.

(b) Prepare guidance for State and local governments on implementing PAGs, including recommendations on protective actions which can be taken to mitigate the potential radiation dose to the population. This guidance will be presented in the Environmental Protection Agency (EPA) "Manual of Protective Action Guides and Protective Actions for Nuclear Incidents." (The preparation of PAGs related to human food and animal feed will be done in coordination with the Department of Health and Human Services (HHS)/Food and Drug Administration.)

(c) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of technical training for State and local officials regarding PAGs and protective actions, radiation dose assessment and decisionmaking.

(e) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(f) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(g) Provide representation to and support for the FRPCC and the RACs.

(h) Assist FEMA in developing representative scenarios from which nuclear facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(i) Assist FEMA in the development, implementation and maintenance of public information and education programs.

§ 351.23 The Department of Health and Human Services.

(a) Develop and specify protective actions and associated guidance to State and local governments for human food and animal feed (in cooperation with the Environmental Protection Agency).

(b) Provide guidance and assistance to State and local governments in preparing programs related to mental health, behavioral disturbances and epidemiology associated with radiological emergencies.

(c) Assist FEMA in the development, implementation and maintenance of public information and education programs to support State and local government radiological emergency plans and preparedness.

(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of a radiological emergency training program to support State and local government personnel in accident assessment, protective actions and decisionmaking.

(e) Develop and assist in providing the requisite training programs for State and local health, mental health and social service agencies.

(f) Provide guidance to State and local governments on the use of radioprotective substances and prophylactic use of drugs (e.g., potassium iodide) to reduce the radiation dose to specific organs including dosage and projected radiation exposures at which such drugs should be used.

(g) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(h) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(i) Provide representation to and support for the FRPCC and the RACs.

(j) Assist FEMA in developing representative scenarios from which nuclear facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(k) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

(l) Assist, in cooperation with the United States Department of Agriculture (USDA), the State and local governments in the planning for the safe production, during radiological emergencies, of human food and animal feed in the emergency planning zones around fixed nuclear facilities.

(m) Assist FEMA, through the Interagency Radiation Research Committee, chaired by the Department of Health and Human Services, in the coordination of Federal research efforts, primarily in areas related to the bioeffects of radiation, applicable to State and local plans and preparedness.

§ 351.24 The Department of Energy.

(a) Determine the appropriate planning bases for the Department of Energy (DOE) owned and contractor operated nuclear facilities (e.g., research and weapon production facilities) including distances, time and radiological characteristics.

(b) Assess DOE nuclear facility emergency plans for adequacy in contributing to the health and safety of the public.

(c) Verify that DOE nuclear facility emergency plans can be adequately implemented (e.g., adequacy and maintenance of equipment, procedures, training, resources, staffing levels and qualifications).

(d) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the preparation of those portions of their radiological emergency plans related to DOE owned and contractor operated nuclear facilities and radioactive materials in transit.

(e) Review and assess FEMA's findings and determinations on the adequacy of and capability to implement State and local radiological emergency plans for areas surrounding DOE nuclear facilities. Make independent assessments of the overall State of plans and preparedness.

(f) Serve as the lead agency for coordinating the development and issuance of interagency instructions and guidance to implement the Federal Radiological Monitoring and Assessment Plan (FRMAP), which will replace the Interagency Radiological Assistance Plan. The FRMAP provides the framework through which participating Federal agencies will coordinate their emergency radiological monitoring and assessment activities with those of State and local governments.

(g) Develop, maintain and improve capability to detect and assess hazardous levels of radiation.

(h) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(i) Assist FEMA with the development, implementation and presentation to the extent that resources permit of training programs for Federal, State and local radiological emergency response personnel.

(j) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(k) Develop, with FEMA, representative scenarios from which DOE facility operators and State and local governments may select for use in testing and exercising radiological emergency plans.

(l) Provide representation to and support for the FRPCC and the RACs.

(m) Assist FEMA in the development of guidance for State and local governments on emergency instrumentation systems for radiation detection and measurement.

§ 351.25 The Department of Transportation.

(a) Assist FEMA, along with NRC, in the preparation and promulgation of guidance to State and local governments for their use in developing the transportation portions of radiological emergency plans.

(b) Assist FEMA in its review and approval of State and local radiological emergency plans and in the evaluation of exercises to test such plans.

(c) Provide guidance and materials for use in training emergency services and other response personnel for transportation accidents involving radioactive materials and participate in interagency planning for such training.

(d) Provide representation to and support for the FRPCC and the RACs.

§ 351.26 The United States Department of Agriculture.

(a) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(b) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and reviewing and evaluating the plans and preparedness.

(c) Assist State and local governments in preparing to implement protective actions in food ingestion pathway emergency planning zones around fixed nuclear facilities.

(d) Develop, in coordination with FEMA, the HHS and other Federal agencies, guidance for assisting State and local governments in the production, processing and distribution of food resources under radiological emergency conditions.

(e) Assist FEMA with the development, implementation and presentation to the extent that resources permit of training programs of Federal, State and local radiological emergency personnel.

(f) Provide representation to and support for the FRPCC and the RACs.

§ 351.27 The Department of Defense.

(a) Determine appropriate planning bases for Department of Defense

(DOD) nuclear facilities and installations (e.g., missile bases, nuclear submarine facilities and weapon storage sites) including distances, time and radiological characteristics.

(b) Develop, with FEMA, representative scenarios from which DOD nuclear facility commanders and State and local governments may select for use in testing and exercising radiological emergency plans.

(c) Assist State and local governments, within the constraints of national security and in coordination with FEMA, in the development, review and assessment of those portions of their radiological emergency plans related to DOD nuclear facilities and assist State officials with planning for response to accidents involving DOD controlled radioactive materials in transit.

(d) Provide representation to and support for the FRPCC and the RACs when appropriate.

§ 351.28 The Department of Commerce.

(a) Assist State and local governments in determining their requirements for meteorological and hydrological services for radiological emergencies and assist State and local governments in preparing to meet these requirements within the limits of available resources.

(b) Assist FEMA in developing and promulgating guidance to State and local governments for the preparation of radiological emergency plans.

(c) Participate with FEMA in assisting State and local governments in developing their radiological emergency plans, evaluating exercises to test plans and evaluating the plans and preparedness.

(d) Assist FEMA with the development, implementation and presentation to the extent that resources permit of technical training for State and local officials in the use of meterological information in responding to radiological emergencies.

(e) Provide representation to and support for the FRPCC and the RACs.

(f) Assist FEMA in the development of guidance for State and local governments on the exposure and location of emergency instrumentation systems for radiation detection and measurement.

(g) The Federal Coordinator for Meteorological Services and Supporting Research will, consistent with the provisions of the Office of Management and Budget Circular A-62, serve as the coordinating agent for any multiagency meteorological aspects of assisting State and local governments in their radiological emergency planning and preparedness.

PARTS 352-359—[RESERVED]

PART 360—STATE ASSISTANCE PROGRAMS FOR TRAINING AND EDUCATION IN COMPREHENSIVE EMERGENCY MANAGEMENT

Sec.

360.1 Purpose.
360.2 Description of program.
360.3 Eligible applicants.
360.4 Administrative procedures.
360.5 General provisions for State Cooperative Agreement.

AUTHORITY: Reorganization Plan No. 3 (3 CFR 1978 comp. p. 329); E.O. 12127 (44 FR 19367); E.O. 12148 (44 FR 43239).

SOURCE: 46 FR 1271, Jan. 6, 1981, unless otherwise noted.

§ 360.1 Purpose.

The Emergency Management Training Program is designed to enhance the States' emergency management training program to increase State capabilities and those of local governments in this field, as well as to give States the opportunity to develop new capabilities and techniques. The Program is an ongoing intergovernmental endeavor which combines financial and human resources to fill the unique training needs of local government, State emergency staffs and State agencies, as well as the general public. States will have the opportunity to develop, implement and evaluate various approaches to accomplish FEMA emergency objectives as well as goals and objectives of their own. The intended result is an enhanced capability to protect lives and property through planning, mitigation, operational skill, and rapid response in case of disaster or attack on this country.

§ 360.2 Description of program.

(a) The program is designed for all States regardless of their present level of involvement in training or their degree of expertise in originating and presenting training courses in the past. The needs of individual States, difference in numbers to be trained, and levels of sophistication in any previous training program have been recognized. It is thus believed that all States are best able to meet their own unique situations and those of local government by being given this opportunity and flexibility.

(b) Each State is asked to submit an acceptable application, to be accompanied by a Training and Education (T&E) plan for a total of three years, only the first year of which will be required to be detailed. The remaining two year program should be presented in terms of ongoing training objectives and programs. In the first year plan applicants shall delineate their objectives in training and education, including a description of the programs to be offered, and identify the audiences and numbers to be trained. Additionally, the State is asked to note the month in which the activity is to be presented, the location, and cost estimates including instructional costs and participant's travel and per diem. These specifics of date, place, and costs will be required for the first year of any three year plan. A three year plan will be submitted each year with an application. Each negotiated agreement will include a section of required training (Radiological Defense), and a section including optional courses to be conducted in response to State and local needs.

(c) FEMA support to the States in their training program for State and local officials, has been designed around three Program elements. Each activity listed in the State Training and Education (T&E) Plan will be derived from the following three elements:

(1) *Government Conducted Courses*: Such courses require the least capability on the part of the State. They are usually conducted through provisions in a FEMA Regional Support Contract and/or FEMA or other Federal agency staff. The State's responsibilities fall primarily into administrative areas of recruiting participants, making all arrangements for the facilities needed for presentation of the course, and the handling of the cost reimbursement to participants, though State staff may participate as instructors. These courses for example include:

(i) Career Development Courses: Phases I, II, and III,

(ii) Radiological Officer and Instructor Courses,

(iii) Technical Workshops on Disaster Recovery or Hazard Mitigation.

(2) *Government and recipient conducted courses*: Responsibilities in these courses fall jointly upon Federal and State government as agreed in the planning for the course. Courses in this category might include:

(i) Emergency Management Workshops,

(ii) Multijurisdictional Emergency Operations Simulation Training.

In this category also, it is expected that the State will be responsible for administrative and logistical requirements, plus any instructional activity as agreed upon prior to the conduct of the course.

(3) *Recipient conducted courses*: This element requires the greatest degree of sophistication in program planning and delivery on the part of the State. Training events proposed by the State must be justified as addressing Emergency Management Training Program objectives. Additionally, they must address State or community needs and indicate the State's ability to present and carry out the Program of Instruction. Courses in this category could include:

(i) Radiological Monitoring,

(ii) Emergency Operations Simulating Training,

(iii) Shelter Management.

(d) In order that this three year comprehensive Training and Education Program planning can proceed in a timely and logical manner, each State will be provided three target appropriation figures, one for each of the three program years. States will develop their proposals, using the target figure to develop their scope of work. Adjustments in funding and the scope of work will be subject to negotiation before finalization. Both the funding and the scope of work will be reviewed each year and adjustments in the out years will reflect increased sophistication and expertise of the States as well as changing training needs within each State.

(e)(1) FEMA funding through the State Cooperative Agreement for the training activities is to be used for travel and per diem expenses of students selected by the States for courses reflecting individually needed or required training. Additionally funds may be expended for course materials and instructor expenses. The funding provided in the State Cooperative Agreement is not for the purpose of conducting ongoing State activities or for funding staff positions to accomplish work to be performed under this Agreement. Nor is the Agreement for the purpose of purchasing equipment which may be obtained with the help of Personnel and Administrative funds. In cases where equipment has been identified as needed in the scope of work submitted with the application, and where it serves as an outreach to a new audience or methodology, equipment purchase may be approved at the time of initial application approval.

(2) Allowable cost will be funded at 100%.

[46 FR 1271, Jan. 6, 1981, as amended at 48 FR 9646, Mar. 8, 1983]

§ 360.3 Eligible applicants.

Each of the 50 States, independent commonwealths, and territories is eligible to participate in a State Cooperative Agreement with FEMA. The department, division, or agency of the State government assigned the responsibility for State training in comprehensive emergency management should file the application.

§ 360.4 Administrative procedures.

(a) *Award.* Each State desiring to participate will negotiate the amount of financial support for the training and education program. Deciding factors will be the scope of the program, a prudent budget, the number of individuals to be trained, and variety of audiences included which are in need of training. All these factors are part of the required application as discussed in § 360.2.

(b) *Period of agreement.* Agreements will be negotiated annually and will be in effect for a period of 12 months. Each agreement, however, will include a scope of work for three years as reflected in § 360.2(b) to give continuity to the total training and education program.

(c) *Submission procedure.* Each State applicant shall comply with the following procedures:

(1) *Issuance of a request for application:* Each State emergency management agency will receive a Request for Application Package from the State's respective FEMA Regional Director.

(2) *How to submit:* Each State shall submit the completed application package to the Regional Director of the Appropriate Region.

(3) *Application package:* The Application Package should include:

(i) A transmittal letter signed by the State Director of the agency tasked with emergency management responsibilities for that State.

(ii) A three year projected training and education scope of work including both "required" training and "optional" courses. The first of the projected three year program is to be detailed as to list of courses, description of training to be offered, audiences to be reached and numbers to be trained. Dates and locations of training as well as costs of delivery and student travel and per diem are to be estimated. Special instructions for this portion of the submittal will be included in the Application Package.

(iii) Standard Form 270 "Request for Advance or Reimbursement" as required by OMB Circular A-102 and FEMA General Provisions for Cooperative Agreements.

(d) *Reporting agreements.* Recipients of State Agreement benefits will report quarterly during the Federal Fiscal year, directly to the Regional Director of their respective Regions. The report should include a narrative of the training programs conducted accompanied by rosters for each event, agenda, and a summary financial statement on the status of the Agreement funds. Any course or training activity included in the Scope of Work and not presented as scheduled should be explained in detail as to the reason for cancellation in the quarterly report. The costs allocated to this cancelled activity should be reprogrammed to another training activity approved by the Regional Director no later than the last day of the 3rd quarter, or released to the Region. An evaluation of the degree to which objectives were met, the effectiveness of the methodology, and the appropriateness of the resources and references used should also be included in the quarterly report. The report is due in the Regional Office no later than the 15th day of January, April, and July. A final report for the year is due the 15th of October.

§ 360.5 General provisions for State Cooperative Agreement.

The legal funding instrument for the State Assistance Program for Training and Education FEMA is the State Cooperative Agreement. All States will be required to comply with FEMA General Provisions for the State Cooperative Agreement. The General Provisions for the State Cooperative Agreement will be provided to the States as part of the Request for Application package. The General Provisions will become part of the Cooperative Agreement.

PART 361—CRITERIA FOR EARTHQUAKE HAZARDS REDUCTION ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Sec.
361.1 Purpose.
361.2 Definitions.
361.3 Project description.
361.4 Matching contributions.
361.5 Criteria for matching contributions.
361.6 Documentation of matching contributions.
361.7 General eligible expenditures.
361.8 Ineligible expenditures.

AUTHORITY: Reorganization Plan Number 3 of 1978; 42 U.S.C. 7701 *et seq.*, E. O. 12148 and 12381, and Earthquake Hazards Reduction Act of 1977 (Pub. L. 95-124) and amendments (Pub. L. 96-472).

SOURCE: 52 FR 33818, Sept. 8, 1987, unless otherwise noted.

§ 361.1 Purpose.

This part prescribes the policies to be followed by the Federal Emergency Management Agency (FEMA) and States in the administration of FEMA's earthquake hazards reduction assistance program, and establishes criteria for cost sharing.

§ 361.2 Definitions.

(a) "Cash Contribution" means the State cash outlay, including the outlay of money contributed to the State by other public agencies and institutions, and private organizations and individuals.

(b) "Cost Sharing" and "Matching" represent that portion of project costs not borne by the Federal Government.

(c) "Eligible Activities" are activities for which FEMA may provide funding to States on a cost-shared basis. They include specific activities and/or projects related to earthquake hazards reduction which fall into one or more of the following general categories: State seismic advisory boards, hazard identification, vulnerability assessments, preparedness and response planning, mitigation planning, and public awareness/education. The activities that will actually be funded shall be determined through individual negotiations between FEMA and the States (see criteria in § 361.3(e)).

(d) "In-kind Contributions" represent the value of noncash contributions provided by the States and other non-Federal parties. In-kind contributions may be in the form of charges for real property and nonexpendable personal property and the value of goods and services directly benefiting and specifically identifiable to the States' earthquake hazards reduction projects.

(e) "Project" means the complete set of earthquake hazards reduction activities undertaken by a State, or other jurisdiction, on a cost-shared basis with FEMA in a given fiscal year.

(f) "Project Period" is the duration of time over which an earthquake hazards reduction project is implemented. This generally corresponds to the Federal fiscal year, i.e., it begins on the first day of a given fiscal year (or as soon as that year's funds are obligated by FEMA to the State) and ends on the last day of that fiscal year. The project period may extend beyond the end of the fiscal year for which the funds are appropriated, as long as FEMA obligates all that year's funds to the State before the end of that year.

(g) "State" means one or more of the States of the United States of America, and includes Puerto Rico and the Virgin Islands. It also means local units of government and/or substate areas that include a number of local government jurisdictions.

(h) "State Assistance" means the funding provided by FEMA under the National Earthquake Hazards Reduction Program (NEHRP) to States to conduct projects and activities specifically related to earthquake hazards reduction. The term also includes assistance to local units of government and/or substate areas, such as a group of several counties.

(i) "Target Allocation" is the maximum amount of FEMA earthquake program funds available to a given high risk State in a fiscal year. It is based primarily upon the total amount of State assistance funds available to FEMA annually, the number of high risk States, and a nationally standardized comparison of these States' seismic risk and population-at-risk. The target allocation is not necessarily the amount of funding that a State will actually receive from FEMA. Rather, it represents a planning basis from which a State can develop its scope of work for the next year's effort. This scope of work then becomes the basis of negotiations between the State and its FEMA Regional Office which will ultimately determine the actual amount of earthquake State assistance to be provided by FEMA.

§ 361.3 Project description.

(a) An objective of the Earthquake Hazards Reduction Act is to develop, in areas of seismic risk, improved understanding of and capability with respect to earthquake-related issues, including methods of controlling the risks, planning to prevent such risks, disseminating warnings of earthquakes, organizing emergency services, and planning for post-earthquake recovery. To achieve this objective, FEMA has implemented an earthquake hazards reduction assistance program for State and local governments in seismic risk areas.

(b) This assistance program provides funding for earthquake hazards reduction activities which are eligible according to the definition in § 361.2(c). The categories, or program elements, listed therein comprise a comprehensive earthquake hazards reduction project for any given seismic risk area. Key aspects of each of these elements are as follows:

(1) *State seismic advisory boards* provide State and local officials responsible for implementing earthquake hazards reduction projects with expert advice in a variety of fields. Boards can identify short- and long-term needs, and provide for interdisciplinary discussion of related topics and issues, in addition to developing a consistent statewide approach to earthquake hazards reduction at the local government level.

(2) *Hazard identification* defines the potential for earthquakes and their related geological hazards in a particular area. It may include:

(i) A presumed specific magnitude earthquake at a specified location, and

(ii) A description of the ground shaking, fault rupture, landslides, liquefaction, and other geologic hazards resulting from that magnitude event.

(3) *Vulnerability assessments*, also known as loss estimation studies, provide information on the impacts and consequences of an earthquake on an area's resources, as well as on opportunities for earthquake hazards mitigation. As such, they are necessary to the development of both preparedness and response plans, and mitigation strategies. They may include estimates of parameters such as:

(i) The number of people killed, injured, or left homeless by an earthquake,

(ii) Damage to critical facilities, lifelines, utilities, and transportation systems,

(iii) Medical needs and available resources,

(iv) Damages to structures and buildings, and

(v) Secondary impacts (fire, dam or levee failures, hazardous material spills, toxic releases, etc.)

(4) *Preparedness/response/planning* are closely related and usually considered as one comprehensive activity. They do differ, however, in that preparedness planning involves those efforts undertaken before an earthquake to prepare for and/or improve capability to respond to the event, while response planning can be defined as the planning necessary to implement an effective response once the earthquake has occurred. Preparedness/response planning usually consider functions related to the following:

(i) Rescue and fire services,

(ii) Medical services,

(iii) Damage assessments,

(iv) Communications,

(v) Security,

(vi) Restoration of lifeline and utility services,

(vii) Transportation,

(viii) Sheltering,

(ix) Public health and information services,

(x) Post-disaster recovery and the return of economic-stability,

(xi) Secondary impacts, such as dam failures, toxic releases, etc., and

(xii) Organization and management.

(5) *Mitigation planning* involves developing and implementing strategies for reducing losses from earthquakes by incorporating principles of seismic safety into public and private decisions regarding the siting, design, and construction of structures; and regarding buildings' nonstructural elements, contents and furnishings. Mitigation also involves developing plans for identifying and retrofitting existing structures that pose threats to life or would suffer major damage in the event of a serious earthquake. Mitigation planning also may involve facilities other than buildings, e.g., dams, hazardous material storage sites, industrial plants, etc.

(6) *Public awareness/earthquake education* activities are designed to increase public awareness of earthquakes and their associated risks, and to stimulate behavioral changes to foster a self-help approach to earthquake preparedness, response, and mitigation. Audiences that may be targeted for such efforts include:

(i) The general public,

(ii) School populations (administrators, teachers, students and parents),

(iii) Special needs groups (e.g., elderly, disabled, non-English speaking),

(iv) Business and industry,

(v) Engineers, architects, builders,

(vi) The media, and

(vii) Public officials.

(c) State eligibility for FEMA State assistance under the NEHRP is based on a combination of the following criteria:

(1) Seismic risk, including the historic occurrence of damaging earthquakes, as well as probable seismic activity,

(2) Total population and major urban concentrations exposed to such risk, and

(3) Other factors, the loss, damage, or disruption of which by a severe earthquake would have serious national implications or impacts upon national security, such as industrial concentrations, concentrations or occurrences of natural resources, financial/economic centers and national defense facilities.

(d) Each fiscal year, FEMA will establish a target allocation of earthquake program funds for each eligible State.

(e) The specific activities, and the distribution of funds among them, that will be undertaken with this assistance will be determined during the annual Comprehensive Cooperative Agreement (CCA) negotiations between FEMA and the State, and will be based upon the following:

(1) The availability of information regarding identification of seismic hazards and vulnerability to those hazards,

(2) Earthquake hazards reduction accomplishments of the State to date,

(3) State and Federal priorities for needed earthquake hazards reduction activities, and

(4) State and local capabilities with respect to staffing, professional expertise, and funding.

(f) All State assistance will be cost shared. Cost sharing will be phased in over three years, beginning with Fiscal Year (FY) 1988. The full cost sharing requirements will be implemented in FY 1990. The sequence is as follows:

(1) For FY 1988, cost sharing will be voluntary. FEMA will continue to provide State assistance without requiring a State match, as it has done in the past. Those States that have previously cost shared with FEMA, or are able to in FY 1988, are encouraged to do so (on either a cash or in-kind basis).

(2) For FY 1989, the minimum acceptable non-Federal contribution is 25 percent of the total project cost.

(i) While FEMA prefers the State match to be cash, in-kind matching is acceptable.

(ii) States are encouraged to add cash to or increase the proportion of cash in their match, and to increase their total match to 50 percent (or more, if possible) of the total project.

(iii) A further condition of eligibility for State assistance in FY 1989 will be documentation by each State of its progress, through FY 1988, in securing the matching funds that will be required to meet the full cost sharing requirements to be implemented in FY 1990.

(3) In FY 1990, full cost sharing will be implemented, requiring a minimum of a 50 percent non-Federal contribution to a State program, with this share required to be cash. In-kind matching will no longer be acceptable. Thus, every dollar FEMA provides to a State must be matched by one dollar from the State. States that can contribute an amount greater than that required by the match are permitted and encouraged to do so. State assistance will, however, not exceed the established target allocation.

(g) As a condition of receiving FEMA funding, at least 15 percent of the amount of the total State project (FEMA State assistance, combined with the State match) must be spent for activities under the Mitigation Planning element.

(h) The State match may be distributed among the eligible activities in any manner that is mutually agreed upon by FEMA and the State in the CCA negotiations.

(i) Negotiations between FEMA and the State regarding the scope of work and the determination of the amount of State assistance to be awarded shall consider earthquake hazards reduction activities previously accomplished by the State, as well as the quality of their performance.

§ 361.4 Matching contributions.

FEMA prefers that the State match be cash, although in FY 1988 and FY 1989 in-kind matches will be acceptable. Starting in FY 1990, however, a cash match will be required. The State contribution need not be applied at the exact time of the obligation of the Federal funds. However, the State full matching share must be obligated by the end of the project period for which the State assistance has been made available for obligation under an approved program or budget.

§ 361.5 Criteria for matching contributions.

(a) The value of any resources accepted as a matching share under one Federal agreement or program cannot be counted again as a contribution under another.

(b) The State seeking the match shall submit documentation sufficient for FEMA to determine that the contribution meets the following requirements. The match shall be:

(1) Necessary and reasonable for proper, cost-effective and efficient administration of the project, allocable solely thereto, and except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State and local governments;

(2) Verifiable from the recipient State's records;

(3) Not allocable to or included as a cost of any other Federally financed program in either the current or a prior period;

(4) Authorized under State law;

(5) Consistent with any limitations or exclusions set forth in these regulations, Federal laws or other governing limitations as to types or amounts of cost items;

(6) Accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances;

(7) Provided for in the approved budget/workplan of the State; and

(8) Consistent with OMB Circular A-87, "Cost Principles for State and Local Governments," and with OMB Circular A-102, "Uniform Requirements for Assistance to State and Local Governments," as revised or amended.

§ 361.6 Documentation of matching contributions.

(a) The statement of work provided by the State to FEMA describing the specific activities comprising its earthquake hazards reduction project, including the project budget, shall reflect a level of effort commensurate with the total of the State and FEMA contributions.

(b) The basis by which the State determines the value of an in-kind match must be documented and a copy retained as part of the official record.

(c) The State shall maintain all records pertaining to matching contributions for a three (3) year period after the date of submission of the final financial report required by the CCA, or date of audit, whichever date comes first.

§ 361.7 General eligible expenditures.

(a) Expenditures must be for activities described in the statement of work mutually agreed to by FEMA and the State during the annual negotiation process, or for activities that the State agrees to perform as a result of subsequent modifications to that statement of work. These activities shall be consistent with the definition of eligible activities in § 361.2(c).

(b) The following is a list of eligible expenditures. When items do not appear on the list they will be considered on a case-by-case basis for policy determinations, based on criteria set forth in § 361.5. All costs must be reasonable, and consistent with OMB Circular A-87.

(1) Direct and indirect salaries or wages (including overtime) of employees hired specifically for carrying out earthquake hazards reduction activities are eligible when engaged in the performance of eligible work.

(2) Reasonable costs for work performed by private contractors on eligible projects contracted for by the State.

(3) Travel costs and per diem costs of State employees not to exceed the actual subsistence expense basis for the permanent or temporary activity, as determined by the State's cost principles governing travel.

(4) Nonexpendable personal property, office supplies, and supplies for workshops; exhibits.

(5) Meetings and conferences, when the primary purpose is dissemination of information relating to the earthquake hazards reduction project.

(6) Training which directly benefits the conduct of earthquake hazards reduction activities.

§ 361.8 Ineligible expenditures.

(a) Expenditures for anything defined as an unallowable cost by OMB Circular A-87.

(b) Federal funds may not be used for the purchase or rental of any equipment such as radio/telephone communications equipment, warning systems, and computers and other related information processing equipment. If a State wishes to use its matching funds for this purpose, it must:

(1) Document during the annual negotiation process with FEMA how this equipment will support the earthquake hazards reduction activities in its scope of work (see § 361.7(a)), and

(2) Claim as credit for its match, if the equipment is to be used for purposes in addition to support of earthquake hazards reduction activities, only that proportion of costs directly related to its earthquake hazards reduction project.

PARTS 362–399 [RESERVED]

APTER IV—DEPARTMENT OF COMMERCE ND DEPARTMENT OF TRANSPORTATION

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PART 401—SHIPPING RESTRICTIONS (T–1)

Sec.
401.1 Prohibited transportation and discharge.
401.2 Application for adjustment or exceptions.
401.3 Reports.
401.4 Records.
401.5 Defense against claims for damages.
401.6 Violations.

AUTHORITY: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154, as amended; Interpret or apply secs. 101, 705, 64 Stat. 799, as amended; 50 U.S.C. App. 2071; E.O. 10480, 3 CFR, 1949–1953 Comp. p. 962.

SOURCE: Transportation Order T-1, 30 FR 9092, July 21, 1965; 32 FR 15831, Nov. 17, 1967. Redesignated at 45 FR 44574, July 1, 1980, unless otherwise noted.

§ 401.1 Prohibited transportation and discharge.

No person shall transport in any ship documented under the laws of the United States or in any aircraft registered under the laws of the United States any commodity at the time not identified by the Symbol B in the last column of the Commodity Control List (339.1 of the Comprehensive Export Schedule, issued by the Bureau of International Commerce, Department of Commerce (15 CFR Parts 368–399), any article designated as arms, ammunition, and implements of war in the United States Munitions List (22 CFR Parts 121–128), or any commodity, including fissionable, materials controlled for export under the Atomic Energy Act of 1954, as amended, to any destination at the time in country groups X, Y, or Z as set forth in the Comprehensive Export Schedule (15 CFR 370.1(g)(2)), and no person shall discharge from any such ship or any such aircraft any such commodity or article at any such port or place or at any other port or place in transit to any such destination, unless a validated export license under the Export Control Act of 1949, as amended, under section 414 of the Mutual Security Act of 1954, as amended, or under the Atomic Energy Act of 1954, as amended, has been obtained for the shipment, or unless authorization for the shipment has been obtained from the Assistant Secretary for Domestic and International Business. This prohibition applies to the owner of the ship or aircraft, the master of the ship or aircraft, or any other officer, employee or agent of the owner of the ship or aircraft who participates in the transportation. The consular officers of the United States are furnished with current copies of the Commodity Control List and will advise which commodities are subject to this restriction.

§ 401.2 Application for adjustment or exceptions.

Any person affected by any provisions of this order may file an application for an adjustment or exception upon the ground that such provision works an exceptional hardship upon him, not suffered by others, or that its enforcement against him would not be in the interest of the national defense program. Such an application may be made by letter or telegram addressed to the Assistant Secretary for Domestic and International Business, Department of Commerce, Washington, DC, 20230, reference T-1. If authorization is requested, any such application should specify in detail the material to be shipped, the name and address of the shipper and of the recipient of the shipment, the ports or places from which and to which the shipment is being made and the use to which the material shipped will be put. The application should also specify in detail the facts which support the applicant's claim for an exception.

§ 401.3 Reports.

Persons subject to this order shall submit such reports to the Assistant Secretary for Domestic and International Business as he shall require, subject to the terms of the Federal Reports Act.

§ 401.4 Records.

Each person participating in any transaction covered by this order shall retain in his possession, for at least 2 years, records of shipments in sufficient detail to permit an audit that determines for each transaction that the provisions of this order have been met. This does not specify any particular

ccounting method and does not re-
uire alteration of the system of rec-
rds customarily maintained, provided
uch records supply an adequate basis
or audit. Records may be retained in
he form of microfilm or other photo-
raphic copies instead of the originals.

401.5 Defense against claims for damages.

No person shall be held liable for
amages or penalties for any default
nder any contract or order which
hall result directly or indirectly from
ompliance with this order or any pro-
ision thereof, notwithstanding that
his order or such provision shall
thereafter be declared by judicial or
ther competent authority to be in-
alid.

401.6 Violations.

Any person who wilfully violates any
rovisions of this order or wilfully con-
eals a material fact or furnishes false
information in the course of operation
under this order is guilty of a crime
and upon conviction may be punished
by fine or imprisonment or both. In
addition, administrative action may be
taken against any such person, deny-
ing him the privileges generally ac-
corded under this order.

PART 402—SHIPMENTS ON AMERICAN FLAG SHIPS AND AIRCRAFT (T-1, INT. 1)

Sec.

402.1 Shipments from the United States.
402.2 Restricted commodities.
402.3 Addition of commodities to the Positive List.
402.4 Calls at restricted ports en route to an unrestricted port with restricted cargo.
402.5 Forwarding commodities previously shipped.
402.6 Relation to Transportation Order T-2.

Authority: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154. Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U.S.C. App. 2071, E.O. 10480, 3 CFR, 1949-1953 Comp. p. 962.

Source: Transportation Order T-1, Interpretation 1, 15 FR 9145, Dec. 21, 1950; 32 FR 15831, Nov. 17, 1967. Redesignated at 45 FR 44574, July 1, 1980, unless otherwise noted.

§ 402.1 Shipments from the United States.

Transportation Order T-1 applies to shipments from the United States, as well as to shipments from foreign ports, on American flag ships and aircraft.

§ 402.2 Restricted commodities.

The restrictions of Transportation Order T-1 apply to the transportation or discharge of (a) commodities on the Positive List (15 CFR Part 399) (as amended from time to time) of the Comprehensive Export Schedule of the Office of International Trade, Department of Commerce, (b) articles on the list of arms, ammunition and implements of war coming within the meaning of Proclamation No. 2776 of March 26, 1948, and (c) commodities, including fissionable materials, controlled for export under the Atomic Energy Act of 1946. The restrictions imposed by Transportation Order T-1 do not apply to other commodities, not within these restricted classes at the time of transportation or discharge, even though authorization for the export of the commodity from the United States to the particular destination is required under regulations of the Office of International Trade or under other Federal law or regulation. In this respect, Order T-1 is different from Order T-2 which applies to all commodities destined to Communist China. Order T-1 does not relax or modify any of the requirements of any other regulation or law.

§ 402.3 Addition of commodities to the Positive List.

Order T-1 applies to the transportation or discharge of commodities which are restricted at the time of transportation or discharge. Accordingly, if a commodity is added to the Positive List while the commodity is being transported on an American flag ship or aircraft, the restrictions of Order T-1 immediately apply and the commodity may not be transported to or discharged at any of the restricted ports or discharged in transit to one of the restricted ports, unless authorization under Order T-1 is obtained.

§ 402.4 Calls at restricted ports en route to an unrestricted port with restricted cargo.

Order T-1 does not prohibit an American flag ship or aircraft from going to or calling at one of the restricted ports, even though it has on board a commodity which could not be discharged at that port. (Note, however, that Order T-2 prohibits American flag ships and aircraft from calling at any port or other place in Communist China.) For example, an American flag ship may call at one of the restricted ports (except one in Communist China), even though it has on board the following classes of commodities:

(a) A Positive List commodity manifested to a destination outside the restricted area, with an export license and an export declaration showing the unrestricted destination at the ultimate destination, (b) a Positive List commodity destined for the restricted port of call which cannot be discharged there because there is no export license or authorization from the Assistant Secretary for Domestic and International Business permitting discharge at the restricted port of call, (c) a commodity of any kind destined for Communist China (the transportation and discharge of which is covered by Order T-2). None of these commodities may be discharged at the restricted port of call. Discharge of any of these commodities at the port covered by the restrictions of Order T-1 is prohibited and subject to penalty, regardless of the circumstances under which the discharge of the cargo at the restricted port occurs, unless appropriate authorization is obtained.

§ 402.5 Forwarding commodities previously shipped.

Order T-1 applies to transportation on or discharge from ships documented under the laws of the United States and aircraft registered under the laws of the United States. These restrictions apply either in the case of a discharge at one of the restricted ports or to discharge at any other port in transit to a restricted destination. The restrictions of Order T-1 do not apply to transportation by foreign carriers, as long as there is no prohibited transportation or discharge by or from a United States flag ship or aircraft after the issuance of Order T-1. Accordingly, if an American flag ship or aircraft, before the issuance of Order T-1, had transported restricted commodities manifested to restricted destinations, and had completed the transportation to a foreign intermediate point and had completed the discharge from the American flag ship or aircraft before the issuance of Order T-1, no violation of that order would have occurred, but Order T-1 would prohibit further shipment on an American flag ship or aircraft unless authorization under Order T-1 is obtained.

§ 402.6 Relation to Transportation Order T-2.

Transportation Order T-1 applies to the transportation of commodities to, or in transit to, destinations in Sub-Group A, Hong Kong or Macao. It applies, however, only to commodities on the Positive List of the Office of International Trade, arms and ammunition, and commodities controlled under the Atomic Energy Act (see section 2 of this interpretation). Transportation Order T-2 applies to the transportation of commodities of any kind which are destined to Communist China (Order T-2 also prohibits American ships and aircraft from calling at any port or place in Communist China). Since Communist China is in Sub-Group A, the restrictions of both orders apply to the transportation of commodities to Communist China or to any other point in transit to Communist China.

PART 403—SHIPPING RESTRICTIONS; NORTH KOREA AND THE COMMUNIST-CONTROLLED AREA OF VIET NAM (T-2)

Sec.

403.1 Prohibition of movement of American carriers to North Korea or to the Communist-controlled area of Viet Nam.
403.2 Prohibition on transportation of goods destined for North Korea or the Communist-controlled area of Viet Nam.
403.3 Persons affected.
403.4 Reports.
403.5 Records.

Sec.
403.6 Defense against claims for damages.
403.7 Violations.

AUTHORITY: Sec. 704, 64 Stat. 816, as amended; 50 U.S.C. App. 2154.[1] Interpret or apply sec. 101, 64 Stat. 799, as amended; 50 U.S.C. App. 2071; E.O. 10480, 18 FR 4939, 3 CFR, 1953. Supp.; and sec. 4(a) Pub. L. 89-670, 80 Stat. 933; 49 U.S.C. 1653.

SOURCE: Transportation Order T-2 (Amended), 37 FR 25040, Nov. 25, 1972. Redesignated at 45 FR 44574, July 1, 1980, unless otherwise noted.

§ 403.1 Prohibition of movement of American carriers to North Korea or to the Communist-controlled area of Viet Nam.

No person shall sail, fly, navigate, or otherwise take any ship documented under the laws of the United States or any aircraft registered under the laws of the United States to North Korea or to the Communist-controlled area of Viet Nam.

§ 403.2 Prohibition on transportation of goods destined for North Korea or the Communist-controlled area of Viet Nam.

No person shall transport, in any ship documented under the laws of the United States, or in any aircraft registered under the laws of the United States, to North Korea or to the Communist-controlled area of Viet Nam, any material, commodity, or cargo of any kind. No person shall take on board any ship documented under the laws of the United States or any aircraft registered under the laws of the United States any material, commodity, or cargo of any kind if he knows or has reason to believe that the material, commodity, or cargo is destined, directly or indirectly for North Korea or for the Communist-controlled area of Viet Nam. No person shall discharge from any ship documented under the laws of the United States or from any aircraft registered under the laws of the United States, at any place other than the port where the cargo was loaded, or within territory under the jurisdiction of the United States any material, commodity, or cargo of any kind which he knows or has reason to believe is destined for North Korea or for the Communist-controlled area of Viet Nam.

§ 403.3 Persons affected.

The prohibitions of this order apply to the owner of the ship or aircraft, to the master of the ship or aircraft, and to any other officer, employee, or agent of the owner of the ship or to any other person who participates in the prohibited activities.

§ 403.4 Reports.

Persons subject to this order shall submit such reports to either the Assistant Secretary of Commerce for Domestic and International Business, Assistant Secretary of Commerce for Maritime Affairs, or the Assistant Secretary of Transportation for Policy and International Affairs, for, respectively, cargoes, vessels or aircraft as shall be required, subject to the terms of the Federal Reports Act.

§ 403.5 Records.

Each person participating in any transaction covered by this order shall retain in his possession, for at least 2 years, records of voyages and shipments in sufficient detail to permit an audit that will determine for each transaction that the provisions of this order have been met. This provision does not require any particular accounting method and does not require alteration of the system customarily maintained, provided such records supply an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals.

§ 403.6 Defense against claims for damages.

No person shall be held liable for damages or penalties for any default under any contract or order which shall result directly or indirectly from compliance with this order or any provision, thereof, notwithstanding that this order or such provision shall thereafter be declared by judicial or other competent authority to be invalid.

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[1] Public Law 92-325, approved June 30, 1972, extended the Defense Production Act of 1950, as amended, to June 30, 1974.

§ 403.7 Violations.

Any person who willfully violates any provisions of this order, or willfully conceals a material fact, or furnishes false information in the course of operation under this order, shall, upon conviction, be punished by fine or imprisonment, or both. In addition, administrative action may be taken against any such person, denying him the privileges generally accorded under this order.

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Redesignation Table 1

At 44 FR 31177, May 31, 1979, the existing regulations of the Federal Insurance Administration, set forth in 24 CFR Chapter X, were redesignated and transferred to Title 44, Chapter I, Subchapter B. The following redesignation table shows the relationship between the Title 24 regulations and the redesignated parts reflected in Title 44:

Old Part 24 CFR	New Part 44 CFR
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1905	55
1906	56
1907	57
1908 [Reserved]	58
1909	59
1910	60
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Redesignation Table 2

At 44 FR 56172, Sept. 28, 1979, the existing regulations of the United States Fire Administration, set forth in 45 CFR Chapter XX, were redesignated and transferred to Title 44, Chapter I, Subchapter C. The following redesignation table shows the relationship between the Title 45 regulations and the redesignated parts reflected in Title 44:

Old Part 45 CFR	New Part 44 CFR
2000	150
2010	151

Redesignation Table 3

At 44 FR 56172, Sept. 28, 1979, the existing regulations of the Federal Disaster Assistance Administration, set forth in 24 CFR Chapter XIII, were redesignated and transferred to Title 44, Chapter I, Subchapter D. The following redesignation table shows the relationship between the Title 24 regulations and the redesignated parts reflected in Title 44:

Old Part 24 CFR	New Part 44 CFR
2200	200
2201	201
2205	205

Redesignation Table 4

At 44 FR 56173, Sept. 28, 1979, the existing regulations of the Defense Civil Preparedness Agency, set forth in 32 CFR Chapter XVIII, were redesignated and transferred to Title 44, Chapter I, Subchapter E. The following redesignation table shows the relationship between the Title 32 regulations and the redesignated parts reflected in Title 44:

Old Part 32 CFR	New Part 44 CFR
[Reserved]	300
1801	301
1807	302
1803	303
1804	304
1809	305
1806	306
1811	307
1808	308
1812	309
1800	310

Redesignation Table 5

At 45 FR 44574–44575, July 1, 1980, the existing regulations of the Federal Preparedness Agency, set forth in 32A CFR Chapter I, were redesignated and transferred to Title 44, Chapters I and IV. For amendments affecting Title 32A, see the "List of CFR Sections Affected" appearing in the Finding Aids section of the 1979 volume. The following redesignation table shows the relationship between Title 32A regulations and the redesignated parts reflected in Title 44:

Old Part 32A CFR	New Part 44 CFR
101	320
102	321
103	322
104	323
105	324
106	325
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111	328
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113	330
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702	403

Regulations Formerly Appearing in Title 44, Public Property and Works

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Title 44, designated Public Property and Works, was in existence until 1973. At FR 27049, Sept. 28, 1973, Title 44 was vacated and existing regulations were nsferred to other titles of the CFR.

All sections in the former Title 44 of the Code of Federal Regulations which re affected by documents published in the Federal Register since January 1, 73, are enumerated in the following list. Entries indicate the nature of the anges effected. Page numbers refer to Federal Register pages.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 49-1963, and 1964-1972," published in three separate volumes.

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OTE: Regulations formerly issued by the Federal Insurance Administration, artment of Housing and Urban Development, were transferred to the Feder- mergency Management Agency at 44 FR 31177, May 31, 1979. The following contains all changes since April 1, 1973, to the regulations formerly codified 4 CFR Chapter X (Parts 1905—1934) prior to transfer to 44 CFR Chapter I, chapter B (Parts 55—84). For the period before January 1, 1973, see the t of CFR Sections Affected, 1949-1963, and 1964-1972", published in three arate volumes. For subsequent changes to the Federal Emergency Manage- t Agency regulations see the "List of CFR Sections Affected" at the end of volume.

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List of CFR Sections Affected

Note: Regulations formerly issued by the Federal Disaster Assistance Administration, Department of Housing and Urban Development, were transferred to the Federal Emergency Management Agency at 44 FR 56172, September 28, 1979. The following list contains all changes since February 22, 1974, to the regulations formerly codified in 24 CFR Chapter XIII (Parts 2200—2205) prior to transfer to 44 CFR Chapter I, Subchapter D (Parts 200—205). For subsequent changes to the Federal Emergency Management Agency regulations see the "List of CFR Sections Affected" at the end of this volume.

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2200.38—2200.39 (Subpart E) Added	9651
2201 Added (provisions derived from 32 CFR Part 1710)	6705
Effective date corrected	9541
2205 Added	28212
2205.75—2205.79 (Subpart G) Added	40161

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2200.11 (d) added	4652
2205 Effective date added	5507
Revised	23253
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2205.48 (c)(1) amended	4256
(c)(1)(i), (ii), and (iii) revised	22030

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NOTE: Regulations formerly issued by the Defense Civil Preparedness Agency, Department of Defense, were transferred to the Federal Emergency Management Agency at 44 FR 56173, September 28, 1979. The following list contains all changes since January 1, 1973, to the regulations formerly codified in 32 CFR Chapter XVIII (Parts 1800—1814) prior to transfer to 44 CFR Chapter I, Subchapter E (Parts 300—310). For subsequent changes to the Federal Emergency Management Agency regulations see the "List of CFR Sections Affected" at the end of this volume.

For the period before January 1, 1973, see the "List of CFR Sections Affected, 1949—1963 and 1964—1972," published in three separate volumes.

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1801.7 Revised	36328
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1803 Revised	16314
1807.9 (b) amended	30114
1808.1 Amended	42736
1808.3 (a) revised	42736
1808.4 Revised	42736
1808.5 Revised	42738
1808.6 (a)(2) revised	42738
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1813 Revised	10457
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1813—1814 Removed	**56173**

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NOTE: Regulations formerly issued by the United States Fire Administration, Department of Commerce, were transferred to the Federal Emergency Management Agency at 44 FR 56172, September 28, 1979. The following list contains all changes since July 18, 1977, to the regulations formerly codified in 45 CFR Chapter XX (Parts 2000—2012) prior to transfer to 44 CFR Chapter I, Subchapter C (Parts 150—151). For subsequent changes to the Federal Emergency Management Agency regulations see the "List of CFR Sections Affected" at the end of this volume.

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All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since Title 44 was established at 44 FR 25797, May 2, 1979, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

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7—9 Heading added........................50276

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10 Heading added........................50276

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55.3 (d) added; interim........................64083

55.4 (a) amended; (d) revised; interim........................64084

55.5 (b) revised; interim........................64084

55.7 (b) and (c) (2) revised; (c)(4) and (5) added; interim........................64084

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59—62 Redesignated from 24 CFR Parts 1909, 1910, 1911 and 1912, respectively........................31177

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61.13 (c) corrected........................62517

64 Redesignated from 24 CFR Part 1914........................31177

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65.4 Table revised........................61005, 67127

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65.6 Revised........................45389, 52836, 57095, 75640

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65.7 Table revised........................61027

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65.8 Table amended........................45136, 68840, 76797

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65.9 Table amended........................45137, 48224, 55011, 55877

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205.76 (d)(4) added; eff. 10-30-80....64585

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10 Added 41142
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65.6 Revised 12421, 26051, 31318, 49570, 52385
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65.7 Table amended 3580, 9916, 17999, 27937, 37442, 41149, 48888, 50757, 50758, 62823, 65219, 82264
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